# Central Law Journal.

ST. LOUIS, MO., JULY 5, 1912.


## WHAT THE COMMISSIONERS ON UNIFORM LAWS ARE DOING FOR THE PEOPLE OF THE UNITED STATES.

At the last session of the Conference of Commissioners on Uniform State Laws, held in Boston, August 23-28, 1911, there were in attendance sixty-five commissioners, representing thirty states and territories. These commissioners sat for six days, laboriously working over the details of tentative drafts of uniform acts, which, when finally completed and approved, will be submitted to the legislatures of the various states for adoption.

In this unique conference sat great lawyers representing all branches of professional activity, including United States Senators, Supreme Court Judges, practicing lawyers, law school professors, and learned experts in special branches of jurisprudence; while, presiding over this august body of picked lawyers, legislators and jurists, was Hon. Walter George Smith, of Philadelphia, a lawyer and a statesman whose pleasing personality and great legal ability have done much to attract the favorable attention of the bar and of the public to the importance of the work of the Conference of Commissions on Uniform State Laws.

These men, leaders in their profession, unobtrusively and without compensation, have been devoting their best efforts to the codification of American law. It is true that, although commissioned by the governor or the legislature of their respective states, the commissioners do not work under pressure of any kind, and, by disposition and training are not men who are impatient for quick results. Rather is it their idea that one perfect code on any particular subject is worth a thousand proposed reforms ill-considered and hastily prepared.

In drawing up a code of laws that is expected to abide the test of time and intense controversy, the important thing is not haste, but accuracy, careful phrasing and the exact use of words to avoid confusion and reduce the necessity for construction on the part of the courts to a minimum. The most noticeable characteristic of much modern legislation is the haste with which it is enacted as if the most important thing about a proposed bill was to get it on the statute books as quickly as possible. Much of this legislation passed in the interest of the public welfare and embodying ideas of reforms of great value is defeated in its purpose by the carelessness with which it is constructed, yet notwithstanding this very evident fact, the people are sometimes inclined to blame the courts for not effectuating the intention of the legislature rather than the awkward and incompetent manner of the legislature itself in discharging its duty. If all proposed laws of a general nature were first submitted to the careful consideration of a body of experts like the Commissioners on Uniform State Laws, they would seldom fail of their purpose and would give rise to very few serious problems for courts to unravel.

Apart, therefore, from the primary idea of the work of the Commissioners on Uniform State Laws to secure uniformity in the laws of the various states, the most important incidental feature of their work and one which bids fair to rival the other in public estimation is the incalculable value of the service performed in the careful drafting of the laws which it proposes for codification. That the commissioners themselves have become convinced of this important phase of their labors is evident by the zeal with which, after some debate, they insisted at their last conference on the appointment of a special committee to propose a draft of a bill for a Uniform Workmen's Compensation Act. The argument was advanced that, while this was a new reform and hardly included in the original purpose of the Commission on Uniform State Laws, nevertheless the legislatures were demanding legislation of this character and that it would be better to offer them a perfect law at the be-

ginning of the movement for this reform than to correct their mistakes later by a more perfect bill. When the legislatures of the various states begin to appreciate the great value of this phase of the work of the Conference of Commissioners on Uniform State Laws there will be a more hearty co-operation on their part with the work of the Commission, and more liberal financial support granted for the purpose of permitting it to extend its useful labors into other fields of legislation.

Without haste, therefore, without ostentation, without partisanship, the Commissioners on Uniform State Laws have moved on in the even tenor of their way for twenty-two years and during that time have produced ten magnificent pieces of legislation known as Uniform Acts and covering the following subjects of law, to-wit: negotiable instruments, warehouse receipts, sales, stock transfers, bills of lading, divorce procedure, foreign wills, family desertion, marriage and child labor. A draft of an act on the subject of corporations has been under consideration of the conference for several years and will probably be the next great work of the conference. This is not as much as some legislatures have done in a single year, but no legislation has ever been drawn with the same great care and ability. Every act is pure gold. It has passed scrutiny for several years. Every year its provisions have been debated and a few more details determined until, finally, the act emerges as perfect as human reason can make it.

Thus has the idea of uniformity, important as this idea is, become to some extent subordinate in importance to the idea that the finished products of legislation turned out by the Commission on Uniform State Laws are by reason of the thoroughness of the investigations made and the careful scrutiny of the language used, to be preferred to any bill or act drawn up by interested individuals or poorly-informed committees. And some legislatures which have discovered this fact are showing their confidence in the work of the Commission by the promptness with which they pass every uniform act that is presented for their action thereon.

The desire for uniformity, however, which was the main consideration in the organization of the commission in 1890, is still a beacon light of hope to those interested in the work of the Commission in spite of the fact that the courts of some of the states which have adopted uniform acts have themselves failed to catch the vision of uniformity and insist on construing such legislation in the light of former decisions. The variance in the decisions, however, which construe such acts as the Negotiable Instruments Law, is comparatively slight and not sufficient to occasion any discouragement. Moreover, the courts are showing an increasing tendency to be governed by the weight of authority in other states in construing Uniform Laws and the Commission has the opportunity at intervals of correcting discrepancies or variances by suggesting uniform amendments which serve the double purpose of perfecting the law itself and adapting it to some changed situation as well as of maintaining the desired uniformity.

To be in line with the potential value of a great commission like that on Uniform State Laws, there should be a closer bond of co-operation between the Commission and the legislatures of the various states. So vital should this relation become that the Commission should come to be regarded as an integral part of every state legislature, as a standing committee, so to speak, whose recommendations should be regarded with favor. Every legislature should appoint Commissioners to represent their states and contribute a fixed amount annually to defray the expenses of the Commission. The fact that lawyers and jurists of so great ability can be found, who are willing to give of their time and services without compensation in drafting the laws of the country, deserves hearty reciprocation on the part of the states in defraying the incidental

expenses attending their labors. Not more than six states hitherto have borne the entire expense of the work of this Commission, whose labors have been appropriated by at least thirty state legislatures without even a vote of appreciation. This situation is without a parallel and is a reflection on the good sense of the people of the states appointing representatives on this Commission. An appropriation of five hundred dollars a year from each state legislature would effectively equip the Commission for its great work and make it the greatest legislative commission in the world. A. H. R.

## NOTES OF IMPORTANT DECISIONS

STATUTE OF FRAUDS—SUFFICIENCY OF MEMORANDUM TO TAKE CONTRACT OUT.—The facts in Grant v. New Departure Mfg. Co., 83 Atl. 212, decided by Connecticut Supreme Court of Errors, exhibits, to our mind, something of a disposition by that court not to adhere too closely to technicality in deciding a question under the statute of frauds, and yet to enforce its requirements in their spirit.

The facts show that plaintiff wrote a letter to his proposed employer accepting an oral offer of employment for a year to begin at a future date, and asked that a written contract be forwarded. The terms and time were stated in this letter. Defendant replied, expressing satisfaction at plaintiff's acceptance, stating the salary for the first year, but said that as no one in its employ had a contract, it was thought better not to depart from this custom. The court thought the letters sufficient memoranda to take the contract out of the statute.

The court said: "The plaintiff's letter states the terms of the original proposition and manifestly was intended as an acceptance of it. That the defendant so understood it appears from its reply. It says therein that it is pleased to note that the plaintiff will be with it on the 1st of February, upon the terms and conditions which had been gone into verbally at the time of the interview and that his salary will be $2,500 for the first year. Had the letter ended here it would have been, in view of the circumstances under which it was written, a sufficient memorandum of a contract for a year to justify the court in its finding of such a contract. The defendant does not seriously contend that it would not, but says it appears by the letters that the plaintiff asked for a contract for a year and that defendant refused to make such a contract."

This was held not to be a proper construction of the letter, but there was a declination merely to send a more formal agreement as that was not its custom and no one had such a contract.

This construction seems proper because there can be no doubt there was a complete agreement in writing and a meeting of minds evidenced by writing, that plaintiff was to enter into employment for a certain time and for a stated salary. This was intended to close negotiations between the parties. In other words, the writings were to have some effect, and the qualification could not be construed as saying they were not intended to evidence an agreement.

The court, however, in ruling that what occurred before the letters were written is competent to show the circumstances as an aid to their interpretation, is treading on more delicate ground. The rule is that a memorandum must be sufficient in itself. Nothing ought to depend upon verbal testimony or the evil aimed at by the statute will occur. But that rule may be unreasonable in view of another general rule that terms of a writing are to be construed in view of the surrounding circumstances. The statute of frauds does not seek metaphysical certainty of its not being violated nor to avoid instruments that in good faith attempt compliance with its requirements.

HUSBAND AND WIFE—SELLING DANGEROUS DRUG TO HUSBAND AFTER NOTICE BY WIFE.—The principle of a right of action by one of a marriage community, against a third person, for alienation of affections of the other, is extended by the Supreme Court of Ohio, to other acts which wrongfully and maliciously interfere with the marital relationship. Flandermeyer v. Cooper, 98 N. E. 102.

In this case a wife sued a druggist for selling morphine to her husband in the face of numerous protests on her part and warnings that he was a morphine fiend and by addiction to a habit he was becoming a wreck incapable of giving her his affection, society and consortium as a husband. The wife recovered and the court affirmed her judgment.

It was claimed by defendant that there was no legal obligation resting on him not to sell the drug, but the court said the facts showed the druggist knew of the husband's growing imbecility and that so sure as he obtained the

drug he "would inject it into his veins" and that "as well might one intentionally detach a heavy weight from its support on high, that in falling would necessarily strike and injure another, and then say it was not my act in detaching this weight, but it was the force of gravity that caused it to fall to earth, and its falling was the proximate cause of injury."

For this simile to be apt there must be eliminated the free will of the purchaser and the court does this in effect by speaking of the husband's "growing imbecility." In other words, the dealer in this case is notified, the court says, in effect, that the husband, sub modo, is entirely irresponsible, and must govern himself accordingly.

The opinion cites two apposite cases, in one of which it was held that the sale of laudanum as a beverage to a married woman, knowing that it is destroying her mind and body and causing loss to her husband, when continued after repeated protests and warnings by the husband, makes the seller liable to damages to him for loss of her services. Holleman v. Harward, 119 N. C. 150, 25 S. E. 972, 34 L. R. A. 803, 56 Am. St. Rep. 672. And a similar ruling on like facts is referred to in Hoard v. Peck, 56 Barb. 202.

## THE "UNIFORM LAW" MOVEMENT—ITS PROGRESS AND PROSPECTS.

At the annual dinner of the Bar Association of the Hawaiian Islands, held at the University Club June 11, 1911, one of the principal speakers was Judge Clemons of the federal court, who discussed the subject of uniform laws, a very important subject which is having much attention throughout the United States.

Judge Clemons on this occasion gave expression to the following observations which serve well as an introduction to this short review of the movement for uniform laws. Judge Clemons said:

### ORIGIN OF THE MOVEMENT.

"The movement to promote uniform legislation is the one great work of the American Bar Association. Since its institution some twenty years ago, the annual conference of commissioners on uniform laws, has become considerable of a convention in itself. At last year's meeting, there were present not only members of the bar, but representatives of the faculties of leading law schools, and of associations such as the American Bankers, the American Warehousemen, the National Association of Credit Men, and the National Civic Federation. The bar association, realizing as well stated, 'the inconvenience of numerous inconsistent and obscure laws purporting to control social relations and business transactions that often transcend the boundaries of states,' in 1899 appointed a committee on uniform state legislation. This committee has grown to the annual conference of commissioners in which are represented all the states but Nevada (which perhaps may be opposed to uniform legislation on divorce), all the territories, and all the possessions except Alaska and the Panama Canal Zone."

### WHAT THE MOVEMENT HAS ACCOMPLISHED.

Now, what has this body accomplished? The statistics will show without much comment:

The adoption of the Negotiable Instruments act in 40 states and territories, the only jurisdictions not having the law being Arkansas, California, Delaware, Georgia, Indiana, Maine, Minnesota, Mississippi, South Carolina, South Dakota, Texas, Vermont, Alaska, Porto Rico, the Philippine Islands, and the Panama Canal Zone. This act has received the high praise of English jurists, especially because it has attempted nothing more than to crystallize the law into well-settled principles accepted by a preponderance of authority, and has avoided experiments in the guise of reform. Mr. Chalmers, who drafted the English act, approved the American draft in nearly every particular.

The second important work of the commissioners is the Uniform Sales act, drafted by Professor Williston of Harvard. It has been adopted in the 10 states of Connecticut, Massachusetts, New Jersey, Ohio, and Rhode Island, and the territory of Arizona.

The Warehouse Receipts act has been enacted by 22 states and territories, including the "granger" states, and covering the large distributing points. Last year saw its adoption by eight jurisdictions.

The Uniform Partnership act, whose original draft is the work of Professor James Barr Ames, has not yet been completed, largely because of constitutional provisions in several states creative of difficulty, the word "associations" having been therein used with such obscurity as to make some present-day confusion between associations incorporated and unincorporated. The death of Professor Ames has prevented his working the question out, but his draft is the basis of the work now being carried forward by Professor William Draper Lewis and Mr. James B. Lichtenberger, who have drawn an act on the same lines as the Ames draft, and

embodying the so-called "legal entity" theory of partnerships.[1]

WORTHY OF HIGH PRAISE.

The law of incorporation of business corporations is now in its third draft, and a copy of it in the hands of every one of the commissioners, of whom there are three or more for every jurisdiction; in the hands of law teachers and prominent practitioners, as well as of leaders in the work of such organizations as the Civic Federation, the American Bankers' Association, the Association of Credit Men, and other national associations. And these drafts are fully and carefully annotated.

The Uniform Stock Transfer act, drafted by Professor Williston, is a very important one, in its fourth "tentative" draft, when final action was proposed for the last conference. It has already been adopted by five states. The law providing a Uniform Stock Certificate is also of importance.

Professor Williston is the author of the first tentative draft of the Bills of Lading act, which has been submitted not only to lawyers, judges and teachers, but to shippers, bankers, and carriers. It has been adopted in seven states.

The advisability of a uniform law governing common carriers of freight is now under consideration, on a suggestion originally emanating from the interstate commerce commission. The matter of a standard form of bill of lading had already been referred to the committee on Commercial Law.

Uniform laws affecting credits are having attention, the committee recommending that the laws affecting credits be brought into closer harmony with the mercantile theory of credits. The Family Desertion act has been adopted in four states and the Act Relating to Wills Executed Within the State, in six states.[2]

In closing this short review it might not be uninteresting to note a closing suggestion in the address of Judge Clemons, already referred to. He said:

"The work for uniformity of laws and the study of this work is bringing some of us to a realization that the mere fact of state boundary lines is no reason against Congress legislating in all matters in which general uniformity of legislation is desirable, and perhaps the only way we can ever hope for uniform divorce or corporation laws is through an amendment of the Constitution giving Congress power to legislate in all matters not of purely local interest or requiring peculiar, local treatment, leaving it perhaps to the Supreme Court to say finally what are and what are not matters of local or of general import."

(1) Judge Clemons says of this "legal entity" theory: "It is an idea having much to commend it, such, as I understand, being the theory of partnerships in the Civil or Roman law, and the theory which our courts have worked out under the Bankruptcy Act. It is a confusion-saving theory.

(2) To sum up the work of Uniform Legislation: Negotiable Instruments Act in 40 states; Warehouse Receipts Act in 22 states; Sales Act in 10 states; Divorce Act in 3 states; Stock Transfer Act in 5 states; Bills of Lading Act in 7 states; Family Desertion Act in 4 states; Act Relating to Wills Executed Without the States in 6 states.

## WHAT THE CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS DID LAST YEAR—A SUMMARY BY THE SECRETARY OF THE CONFERENCE.

The National Conference of Commissioners on Uniform State Laws is made up of Commissioners appointed by the Governors of the different states, meeting in conference and organizing themselves into a national body for the better accomplishment of the work for which its members were appointed by the states. The Commissioners, usually three from each state, are appointed under laws of the respective states creating them, usually for five years, with authority to confer with the Commissioners of the other states and recommend forms of bills or measures to bring about uniformity of laws in the execution and proofs of deeds and wills, in the laws of bills and notes, marriage and divorce and other subjects where such uniformity seems practicable and desirable. The officers of the National Conference consist of a President, Vice-President, Secretary and Treasurer, elected annually. Twenty-one conferences have so far been held—the first at Saratoga, for three days, beginning August 24, 1892, and the twenty-first at Boston, Mass., August 23, 24, 25, 26 and 28, 1911.

The time of the twenty-first conference was largely taken up in the consideration of the draft of an Act to make Uniform the Law of the Incorporation of Business Corporations, the Act relating to Marriage and Marriage Licenses, the draft of a Workmen's Compensation Act, draft of a Uniform Child Labor Law, discussion of an Act on Partnership, and the draft of an Act relative to the Probate of Foreign Wills.

The draft of the proposed Child Labor Legislation Act was finally approved by the conference and recommended for adoption to the various states.

The Act relating to Marriage and Marriage Licenses was finally approved by the conference.

The Committee on Insurance was authorized to consider and make a report at the next conference on the question of a uniform act on the subject of insurance companies and the rules under which they should be conducted.

The conference recommended for adoption by the various states the Federal Food and Drug Act of 1906.

The Committee on Marriage and Divorce was directed to have printed the Act relating to Marriage and Marriage Licenses, as approved by the conference with annotations, and to circulate same prior to November 1st of this year.

The Workmen's Compensation Act was recommitted to the committee for further consideration and report next year.

The Committee on Commercial Law was directed to report their recommendations in reference to the draft of an Act to make Uniform the Law on Partnership at some future meeting of the conference.

The Committee on Commercial Law was authorized to take up the subject of business associations, other than common law partnerships and corporations, with a view to preparing a statute on that subject after the conference has disposed of the Partnership Act, and the committee was empowered to authorize Dr. William Draper Lewis, on behalf of the Drafting Association, to undertake preliminary investigations in reference thereto, without expense to the conference.

The Commissioners of states where the Torrens Law is now in force were requested to present to the Committee on the Torrens System and Registration of Land Titles before January 1, 1912, a statement respecting the working of the law in their states.

The Committee on a Uniform Incorporation Law was authorized to prepare and print a third tentative draft of an Incorporation Act, and a digest and analysis of the incorporation laws of the various states and distribute the same prior to the next conference, and present such tentative draft for action at the next meeting.

The Committee on Wills, Descent and Distribution was instructed to prepare an annotated draft of the Act relative to the Probate of Foreign Wills and to submit same at the next conference; the committee was authorized to expend not exceeding $100 for the preparation of a digest of the laws of the several states regarding the effect of the probate of foreign wills and subjects kindred thereto, and of judicial decisions interpreting such statutes, so far as may be necessary to a correct understanding thereof; such information when obtained to be printed with a tentative draft of the Act and distributed to Commissioners and others interested in the subject.

The conference earnestly urges upon the legislatures of the several states, as well as upon their Commissioners, the importance of introducing at the next session all of the bills recommended by the conference.

CHARLES T. TERRY,
Secretary Conference of Commissioners on Uniform State Laws.
New York, N. Y.

## THE COMMISSION ON UNIFORM STATE LAWS—WHAT IT IS, WHAT IT HAS DONE AND WHAT IT NEEDS.

It is gratifying to know that a special number of the Central Law Journal will give prominence to the work of the Conference of Commissioners on Uniform State Laws. Although the Conference is not officially connected with the American Bar Association, it is, as the Journal has pointed out to its readers, and has been for the past twenty-two years, the only medium through which the conclusions of the Association, so far as they deal with uniform legislation, have been or can be formulated.

It may not be out of place in this, the twenty-second year of the existence of the Conferenec of Commissioners of Uniform State Laws, to indulge in a brief historical retrospect. It will be remembered by some who had the privilege of being present at the session, and by others who are familiar with the reports of the American Bar Association, that a special committee was appointed in 1884[1] to consider what measures

might properly be adopted to overcome the delay and uncertainty of judicial administration. This committee comprised David Dudley Field, John F. Dillon, George G. Wright, Seymour D. Thompson and Cortlandt Parker, all of them great lawyers, and all now gone save the venerable John F. Dillon. Among the resolutions reported by them was the following:

"The law itself should be reduced so far as possible to the form of a statute."

To this resolution Mr. Parker dissented because, in his judgment, its adoption would commit the Association to the proposition that "our general law should be upon the system of establishing what is termed à 'code' instead of the system of the law of England as originally adopted, and still almost universal in America." After a very full and very complete debate, the resolution, modified by an amendment of Austin Abbott, was adopted in this language:

"The law itself should be reduced so far as its substantive principles are settled to the form of a statute."

Five years later this Conference came into being, and quite irrespective of the merits or demerits of the proposed codification of the body of the law, public sentiment had gradually become aroused, to some extent at least, to an appreciation of the danger, uncertainty and gross injustice resulting from the different inferences drawn by the courts of the various states, from the precedents that were claimed to establish the law upon matters affecting the rights and duties of citizens whose business was carried on beyond the borders of their own states. The close inter-communication brought about by the modern uses of steam and electricity have caused a revolution in mercantile business which has not yet reached its fullest development. Instead of going to the local shopkeeper for merchandise necessary for use in daily life, through the medium of mail orders or traveling agents the distributing centers, even in obscure agricultural communities, have been transferred to great cities. The boundaries of the states have become, from the point of view of the business man, merely geographical expressions.

Under circumstances such as these, it was but natural that some effort should be made to bring about uniformity in those branches of the law where local interests would not be seriously affected. It was recognized, of course, that any action on the part of the states must be purely voluntary, for each state is a sovereign in the great mass of matters affecting its citizens and their property. The power of the federal government, greatly as it has been extended by judicial interpretation of the Constitution (and let it not be thought for a moment that judicial interpretation has been judicial legislation) cannot reach the body of the law of contracts excepting as it affects interstate commerce, nor of the law of decedents' estates, nor the great social questions arising out of the marriage relation and its severance.

There are those who believe that because the American people in all the wide extent of territory owing allegiance to the national government are essentially homogeneous, and because, however separated by geographical lines, they trace their legal institutions and political ideals to the same source, it is desirable and inevitable that the waning importance of the state government should be still more lessened, and that uniformity, which all deem to be an end most devoutly to be sought in a very large proportion of the body of our law, can only be obtained by such amendments to the national constitution as will give to the court of the United States a jurisdiction almost as complete as that exercised by those of the various states in matters appertaining to domestic affairs.

The constant argument against the efforts of this Conference is the danger of losing all that has been gained after a uniform act has been passed; that divergent interpretation of its sections will render

(1) Report of Am. Bar Ass'n., 1886, pp. 72-74.

the situation as complex afterwards as it was before the effort was made. I find this nowhere better expressed than in an address of Hon. Frank Bergen, one of the Commissioners on Uniform State Laws, from the State of New Jersey. Speaking of the Negotiable Instruments Act, he says:

"It is, I think, the most consummate piece of codification to be found in the legal literature of our language. But, unhappily, the act cannot be implicitly relied on as a uniform law, even among the states and territories in which it has been enacted, because it has already been amended in several states in a few particulars, and without the concurrence of the other states in which the original bill had been passed."

And then, after a review of the other work of the Conference and the general principles that should govern codification, and referring to the division of thought that has existed from the time of the Revolution when "it was said that some of the people thought locally and others thought continentally," and asserting that "we are still divided to some degree along the same line," he reaches this pessimistic conclusion:

"After sixteen years of experience in the effort to promote uniform legislation among the states by their voluntary action, I am beginning to think continentally, and coming to the conclusion—reluctantly, I admit—that we shall never get the benefits of uniform legislation until the federal constitution is construed or amended so as to give Congress power to enact general laws on subjects of common concern that shall be binding on all the people, wherever the sovereignty of the Union extends. It would not require very much enlargement of the commerce clause of the federal constitution beyond its present dimensions to confer on Congress power to pass effectively all the bills relating to commercial paper and to regulate commercial transactions which the Commissioners on Uniform Laws have framed during the past twenty years. But I would not stop there. If we must look to Washington for relief from the complexity of much of our jurisprudence, Congress should have the power also to enact general laws on the subject of wills, conveyances, marriage and divorce, and on other subjects in which the people have interests in common. Besides, I think Congress should also have power to create corporations to carry on every legitimate commercial business, subject to such restrictions and regulations as experience in the states has suggested. * * * The quality of our food and medicine is prescribed at Washington. Besides, Congress has recently invaded the states and levied an income tax on nearly all of our corporations, and bye and bye individuals may be visited for the same purpose. The prejudice against these important Acts of Congress, or similar statutes, that once was violent, has almost entirely passed away. We see their benefits more clearly as our fears vanish. Why may we not expect to gain similar advantages by Congressional legislation on the other subjects I have mentioned?"

I have thought it well to give this extended quotation from the able address of my accomplished colleague, because it shows a tendency of contemporary thought that must necessarily be of interest to all who cherish the ideal of uniformity. It would seem to be a frank admission that our dual system of state and federal government cannot stand the strain of modern business conditions. It may be so, and little by little the principle of local self-government will yield to the imperial tendency until the quasi-sovereignty of the states will become but a shadow. But these are political questions, and, rapidly as political conditions change, it will take a long time to destroy the confidence of the masses of the American people in a system of government unique in the history of civilization, and now, after the vicissitudes of nearly a century and a quarter, remaining among the oldest among civilized nations.

It is not for the Commission on Uniform State Laws after an experience of a generation, to despair of success. On the con-

trary, frankly admitting there have been a proportion of errors discovered in the Uniform Acts, and that the objection that uniformity will in a measure be destroyed by discordant decisions by the courts has a measure of plausibility, it may confidently be asserted that lasting good results have come from the work in which the commission has been engaged, and the evils may be minimized by a simple expedient.

It will be remembered that a resolution was adopted by the National Civic Federation, recommending that any proposed amendments to uniform laws should be first submitted to the Conference of Commissioners on Uniform State Laws.[2] It would seem to be wise not to wait until such amendments are submitted, but such amendments should originate in the Commission itself. Sufficient time has elapsed since the adoption of the Negotiable Instruments Act in many of the states for at least the major part of its weaknesses to have developed. I understand that the Committee on Commercial Law have in contemplation a number of proposed amendments to this Act, designed to meet divergent decisions and statutory changes in some of the states. I expect that this committee will be instructed at as early a time as is consistent with the importance of the work to report the proposed amendments in order that they may be submitted to the various legislatures, and the same course of action will be followed by the different committees of this Conference responsible for the initiation of legislation on the particular subjects confided to them.

The value of the work so far accomplished has not failed of appreciation by the Central Law Journal and by other competent authority. What seemed at first a hopeless task, has proved to be an entirely feasible one. The legislatures of the various states are quite ready to enact uniform laws when they bear the stamp of careful work and have back of them the authority of the profession. Not alone in commercial law, but in that which affects the social relations, a measure of success has been attained, and it needs but the continued support of the Bar Associations of the different states to make the future far more productive than the past has been.

Our great difficulty is lack of the necessary money to pay the expenses of printing, expert fees and for the meetings of committees. A very small appropriation by each of the states for the traveling expenses of their commissioners and a proportion of those of the Conference would give us the few thousands of dollars a year that we need, but only a very small number of the states makes any contribution for any of these purposes. Were it not for the generous support of a few of the states, especially New York, Pennsylvania and Connecticut and of the American Bar Association and of certain of the State Bar Associations, notably that of New York and of Illinois, our work could not have been of great significance.

Busy members of our profession are giving of their time to matters of vital interest to the community at large. It would seem that it needs but a proper appeal to the different legislatures when in session, by lawyers in each state, who know of the value of this effort for uniformity of legislation, to obtain for our treasury the relief it sorely needs.

The next meeting of the Conference, at Milwaukee, bids fair to have even a larger attendance than that of the year 1911, at Boston, which was the best in that respect the Conference has yet held, there being present sixty-five commissioners, representing thirty states and one territory and the District of Columbia. When this is compared with the first year, 1901, when but twenty-three commissioners were present,

(2) Resolved, That if any person or organization, after studying the laws submitted by the Conference on Uniform State Laws, thinks that any of them need amendment such persons and organizations be earnestly urged to try to bring about such amendment, through the National Conference of Commissioners on Uniform State Laws, to the end that even in amendments uniformity may be preserved. (Rep. Am. Bar Ass'n., 1910, p. 20).

representing thirteen states and one territory, it will be seen how interest in our work has increased.

I have to thank the editor of the Central Law Journal on behalf of the Conference, for the very great assistance the Journal has given to the cause we all have at heart.

WALTER GEORGE SMITH.
President Conference of Commissioners on Uniform State Laws.
Philadelphia, Pa.

---

## WHO PAYS THE BILLS OF THE CONFERENCE OF COMMISSIONERS OF UNIFORM STATE LAWS?

The report of the treasurer discloses the fact that last year six states paid the expenses of a commission which is drafting the laws of forty-seven states who have representation on the Commission. These states are New York, $500; Connecticut, $300; Pennsylvania, $300; Massachusetts, $100; Utah, $100; Rhode Island, $100. This, together with special contributions from the American, Illinois and New York Bar Association represent an income of little over $2000.

Referring to the inexplicable neglect of the state legislatures in taking care of a body which is rendering them great service, Mr. Charles Thaddeus Terry, of New York, made the following very pertinent observations at the last meeting of the conference. He said:

"Not one of the Commissioners of Uniform State Laws has ever suggested, and probably never thought of receiving money compensation for his services. For the most part there could be no money compensation adequate to the services. The time and the energies which many of the Commissioners have been giving to this work are beyond price. There remains, however, this consideration: That there are many things which this conference must have and which it must pay for. There are expenses connected with the administration of this body. Those expenses, if we are to maintain our independence and individuality, must come from the states which have appointed us as their representatives. From time to time suggestions have been made of ways and means for procuring action on the part of the respective states along these lines, and from time to time such action has been had. I want to call attention to the fact that in the year last past, more action of that kind has been had and more results along that line have been attained than in any year heretofore. Let the good work go on energetically. Let the various Commissioners emulate the example of New York, Utah, Connecticut, Pennsylvania, Massachusetts and Rhode Island, which states have during the past year given appropriations to the general fund of this conference.

"I want to call attention, if I may, to the good work done by Mr. John C. Richberg, of Chicago. Finding that the legislature of Illinois was not in a mood to make its contribution, in such form as to enable the Commission to avail itself of it, he went to his State Bar Association and stated the purposes of the Commission and the work it was doing, and it contributed to the fund for the general work of this conference. If we are to maintain our independence and our disinterested action we must have a continuance of that kind of work, and we must have ample funds."

---

## SHALL THERE BE A UNIFORM ACT ON THE SUBJECT OF WORKMAN'S COMPENSATION.

No subject of legislation is so prominent before the public as that providing for compensation to workmen from industrial accidents. Many proposed laws have been offered, some have been passed by state legislatures and one has been held unconstitutional.

There is no doubt that it would be of great advantage for some competent body or commission to consider carefully all the proposed laws and to draw up a draft for adoption by the states. Such an act should be uniform throughout the country.

There has been a strong movement to have the Commissioners on Uniform State Laws consider and propose an act of this character. At the last conference of the Commissioners at Boston, the suggestion took shape and a special committee was authorized to draw up an act to be submitted to the conference that meets in August in connection with the meeting of the American Bar Association.

In view of this fact, it might not be without value to call attention to the remarks of Mr. Hollis R. Bailey, of Boston, chairman of the special committee considering this subject, which he addressed to the conference at its meeting in Boston. Mr. Bailey said:

"The Special Committee on Workingmen's Compensation Act at its first meeting in Octo-

ber was confronted with the question whether or not it was a proper thing for the Commission to enact any legislation of this sort, because it has been said at every meeting of the Commission that the conference should not go into matters of reform legislation, but should confine itself to codifying existing legislation. Indeed, as a rule, that has been the policy of the Commission. But the committee at its meeting in Philadelphia, considering that question, was unanimous in the opinion that it was a proper matter for the Commission, and this conference to deal with. I think one of the most important reasons which lead to that conclusion was this: That the different states were just embarking upon the matter of enacting new legislation, the matter was in a formative state, and the conference could do more good towards procuring uniformity while the matter was still in a formative state than it could at any later period, perhaps. So it was that we reached the conclusion that we did. It seemed to us that after two years' discussion, with the assistance that we might get from experts and others, we could reach a result that would be helpful; and, moreover, as we were going along, we could exert influence upon the different states and so procure a greater degree of uniformity in the different states than otherwise. We went to Chicago and held a meeting, and all the states which were going to frame laws on the subject were represented there, and their representatives were there prepared to do business, they were not there to wait for this Commission to give them an Act, but they were there to exchange views and suggestions, and I think that the committee, although it was not at that time very well educated upon this subject, did exert some influence for good by impressing upon the various Commissioners the importance of trying to secure uniform legislation. Rightly or wrongly, the committee decided that this subject of Workingmen's Compensation was a proper subject for this body to deal with. Having reached that stage, we then proceeded to inform ourselves as best we might on the subject.

"We found a great body of information gathered by the Commission in Minnesota, and the Commission in Ohio, and the Commission in Massachusetts, as to the Acts in force upon the Continent, and as to the acts in force in Great Britain, and we were greatly instructed by the information given by men just back from Europe, who had canvassed the whole situation and had made a study of the German Act, the French Act, the English Act and the Norwegian Act, telling us as to the strong and weak points of them, and of the weakness of the insurance proposition, and also of the strength of the so-called 'elective idea,' as contrasted with the idea of the Compulsory Workingmen's Compensation Act. We were told by those gentlemen that an Elective Compensation Act would not do; that it had been tried in France, and that it did not meet with much success, and they had come down to compulsory basis. The English Act from the beginning was on a compulsory basis. All the European powers, some on the English plan and some on the insurance plan, were all on a compulsory basis. It was suggested by Mr. Lowell, of Massachusetts, that for two years we had had an Electice Act on the statute books and no one even knew of it.

"Then there came the important suggestion from Wisconsin, from a member of the Commission there, that there was a way of beating the devil around the stump. The trouble about a Compulsory Act, as you may know, is the constitutional difficulty that is in the way. In Wisconsin it was suggested that we could make something that was called elective, but by means of certain penalties it might be almost the same as something compulsory. That idea, which I think originated in Wisconsin, has been adopted in Massachusetts. The Ohio act is on the same idea, and so is that of New Jersey, I believe. So that the elective idea is one which we have to consider and it is the theory that the committee has adopted and embodied in the Act that we have put before you.

"The idea is this: That we say to the employer, 'If you refuse to come under the Act when the employee is ready to come under it, then you will be stripped of your defenses that you now have of the fellow-servant rule, the contributory negligence rule, and the assumption of risk rule, and you will be left to go to the jury the best you can.' And we say to the workingman: 'If your employer wants to come under this act and you refuse to come under it, then you will be stripped of those additional rights which are given you by the Employer's Liability Acts, namely, the right to recover large amounts for injuries and the right of your heirs to recover large amounts in case of your death and certain other disabilities will be placed upon you.' At first that did not seem to those who thought we ought to have a complete Compulsory Act to be just the same, but I think the feeling is growing that this so-called elective system is in reality a compulsory system; that is to say, the lawyers, members of this conference

and others who are advising employers, are telling them that they must come under the system. So that the thing is quite likely to work out successfully in the way of coming into operation in New Jersey, in Ohio, in Massachusetts, in Wisconsin, and in such other states as have adopted Acts upon the elective basis. In Minnesota, some of the Commissioners were afraid that this elective feature was unconstitutional. I think some of the Commissioners here present from Illinois have had that opinion. There has been a very strong feeling that it would not do to use this club over the employer and the employee. The question came up about a month ago in the supreme court in Massachusetts. The Legislature of Massachusetts has a right to ask the opinion of the court as to the constitutionality of any proposed legislation, and the Legislature having before them an Employees' Compensation Act, which was framed on the insurance theory, but also framed on the elective basis, the question was put to the court as to whether it was constitutional. There were some other questions involved, too, but that was the principal question; and the Massachuetts court, in an opinion—not very lengthy, but still based upon authorities as the court gathered them—held squarely that those provisions were permissible and were constitutional. Now, what the other states will do on them we do not know now, but we have that much to build upon.

"The report states that the New York Act was held by the Court of Appeals in that state to be unconstitutional. Now, that was a purely Compulsory Act. It was confined to a certain number of dangerous employments. In 1910, the New York Legislature enacted two laws, one of which was compulsory and the other of which was elective. It is only the Compulsory Act which has been declared unconstitutional by the New York court. The opinion of the New York court was a very long and learned one, but as I have learned from conversation with some of the leaders in this movement in New York and elsewhere, the feeling seems to prevail there that the last word on the subject is not yet said. The State of Washington has enacted a Compulsory Act upon the insurance basis, but still upon the compulsory theory, and the question will come up there undoubtedly within a year as to whether they are going to follow the reasoning of the New York Court of Appeals. I think it is an open question whether they will. Strong arguments will be made, undoubtedly, showing that the New York court overlooked some things which are of importance. That the police power of the state is larger than the New York court was willing to allow; that the police power as recognized by the United States Supreme Court was very much larger; that the police power of the state is largely limited, when it is limited, by the question of public policy, and that the public policy of a state is larger as the same may be declared by the Legislature of the state. The New York court passed very lightly over the fact that England, and a large number of her colonies, as well as Germany, France, Austria, Spain, Italy and Norway had gotten away from the idea that there could be money taken from an employer only on the basis of fault upon his part; and the question now comes and will come up in the United States, whether the fact that so many nations have recognized a new principle as the basis, not only of justice and humanity, but of sound economic principles, that when a state like New York, or a state like Washington, have regard to what we may call modern ideas, declares that there is a policy which we think well of—whether the court has a right to say that that is taking property without due process of law and therefore unconstitutional. The New York courts said very little about the benefits which the employer was going to get as an offset for the new burden placed upon him.

"I am not here to make an argument for the compulsory theory, although I do believe that until we get on that basis we shall not get where we belong. It seems to me that the reasoning which has led England and all her colonies and other countries to adopt this new principle ultimately is going to prevail in this country, and some time we shall have that theory fully recognized here.

'The committee was unanimous; I signed the report because I believed that for a starting point it is well to start in this way; this body is recognized to be a conservative body, and although we have started in this domain of what one might call experimental legislation, still we want to be conservative, and we think that starting on this elective basis is safer and that, when the people get educated as to these new principles, then the Legislatures and the courts can be asked to go a little further.

Now, the committee does not ask you at this session of the conference to do more than to consider the draft of the Act which we have prepared, and to make suggestions and amendments to it, so that the committee dur-

ing the year may have the benefit of those suggestions."

The tentative act as proposed by the committee will be discussed at the next meeting of the conference of Commissioners on Uniform State Laws. After which time we expect to devote a special issue of the Journal to this very important subject. A. H. R.

---

BILLS AND NOTES—CONSTRUCTION OF UNIFORM NEGOTIABLE INSTRUMENTS LAW.

LUMBERMEN'S NAT. BANK OF PORTLAND v. CAMPBELL.

Supreme Court of Oregon, February 20, 1912.

The negotiable instrument law (L. O. L. §§ 5834-6025) was designed to harmonize the decisions in respect to commercial paper, to give negotiable instruments certainty, and to change the rule of construction as to the liability of accommodation parties who sign as joint makers, so that, under L. O. L. § 6023, which provides that when an instrument containing the words "I promise to pay" is signed by two or more persons they are deemed jointly and severally liable, and section 5850, subd. 7, which provides that an accommodation party is liable to a holder for value who knew at the time of taking the instrument that he was only an accommodation party, a signer of a negotiable instrument, who subscribed as a joint maker, is liable thereon, though the payee may have known that he was only an accommodation party, and parol evidence is inadmissible to alter the relation assumed.

MOORE, J.: * * * * * * Where a party places his name as a maker on the face of a promissory note before delivery, he cannot, in an action on the instrument, be permitted to show by parol evidence that he was in fact an indorser; nor is his liability as a joint promisor changed to that of an indorser, because at the time he sent the note to the payee he stated, in a letter accompanying the instrument, that he had "indorsed" it. Tacoma Mill Co. v. Sherwood, 11 Wash. 492, 498, 39 Pac. 977, 979. In deciding that case, Mr. Justice Scott, answering the assertion made by defendant's counsel that a party signing a promissory note as maker could, in an action on the instrument, show that he subscribed his name as an indorser only, says: "It has also been held in suits between indorsers upon a note that it may be shown that their liability is a joint instead of a succeeding one; but this was upon the ground that the contract in such case is one implied by law, and that it was not in violation of the rule as to admitting parol testimony to vary a written instrument. But none of these cases sustain the proposition contended for here. The liability assumed by a surety upon a note is essentially different from that assumed by an indorser. The surety is liable the same as the principal. It is true the payee may not enter into a subsequent contract with the principal of the note, extending the time of payment, etc., without the surety's consent, and still hold him. But as to the indorser the situation is entirely different. Upon the maturity of the note, the holder is called upon to take some action in case of nonpayment, to maintain his claim against the indorser; and if proof was to be admitted that a person signing a note as a maker was in fact only an indorser it would be a plain violation of the rule as to admitting proof of a contemporaneous oral agreement to vary statements of a written instrument. No case has been called to our attention where any court has held that the maker of a note may show by such testimony that he was simply to be held as an indorser."

(10) It is believed that the decision in that case logically announces a rule which should be controlling herein. But independent thereof the passage of the negotiable instrument law in 1909 (L. O. L. §§ 5834-6025) has so changed the decisions of our court in respect to the liability of parties to promissory notes as to render the testimony and evidence, which the court excluded in the case at bar, inadmissible. Some of the provisions of such act will be set forth, to-wit: "The person 'primarily' liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same." L. O. L. § 6023. "When an instrument containing the words, 'I promise to pay,' is signed by two or more persons, they are deemed to be jointly and severally liable thereon." Id. § 5850, subd. 7. "An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party." Id. § 5862. "A negotiable instrument is discharged (1) by payment in due course or on behalf of the

principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument, at or after maturity, in his own right." Id. § 5952.

The act from which these excerpts are taken was designed to harmonize the decisions of courts of last resort in respect to commercial paper, and to give to negotiable instruments a degree of certainty that would be universal in its application in the states enacting the law. The act was also intended to change the rule of construction with reference to the liability of accommodation parties who signed negotiable promissory notes as joint makers. White v. Savage, 48 Or. 604, 87 Pac. 1040; Cellers v. Meachem, 49 Or. 186, 89 Pac. 426, 10 L. R. A. (N. S.) 133. In that capacity, the defendant subscribed his name to the negotiable instrument involved herein, which, it is admitted, was issued for value. By the express terms of the contract, he is liable as a joint maker, notwithstanding the plaintiff may have known he was only an accommodation party, and parol evidence was inadmissible to alter the relation he assumed.

The defendant undoubtedly loaned his name to Witherspoon, thereby enabling him to obtain from the plaintiff a sum of money for the repayment of which Campbell rendered himself primarily liable. In Rouse v. Wooten, 140 N. C. 557, 53 S. E. 430, 111 Am. St. Rep. 875, 876, in construing a clause of the negotiable instrument law of North Carolina (Revisal 1905, § 2342), identical with that of L. O. L. § 6023, Mr. Justice Walker says: "A surety comes squarely within the definition of a person whose liability is primary; for he is, by the terms of the instrument, absolutely required to pay the same."

(11) It will be remembered that defendant alleges in the answer that his name was inadvertently written on the face of the note. In this state courts of equity and of law are essentially different forums, though presided over by the same trial judge. The answer, to which reference has been made, constituted no defense to an action at law to recover the amount due on the promissory note. Hughes v. Pratt, 37 Or. 45, 60 Pac. 707. If any equity existed dehors the instrument which would prevent its enforcement against the defendant, he did not, upon answering in the action, file a complaint in equity in the nature of a cross-bill to have the alleged mistake, which was made in issuing the note, corrected. L. O. L. § 390; Wilson v. Wilson, 26 Or. 251, 38 Pac. 185. Whether or not the procedure indicated would have been available is needless to inquire, for it was not invoked.

In any view of the case that may be taken, the testimony and evidence offered were inadmissible, and no errors were committed in rejecting the tenders of proof.

It follows that the judgment should be affirmed; and it is so ordered.

NOTE.—*Parol Evidence as to Status of Signer of Negotiable Instrument.*—While decision appears to be quite uniform as regards the inadmissibility of parol evidence to vary in any respect the status of an indorser—or one signing on the back of a note—supposed to be fixed by the Negotiable Instruments Act, it does not seem so well understood, about such evidence as respects those who sign as makers. The principal case holds that the same ruling in reference to indorsers applies also to joint-makers. We submit some cases we have gathered, citing from states which have and have not adopted the Negotiable Instruments Act and which have been decided since such adoption respectively, noting whether or not any allusion was made to the act. We take it, of course, that failure to allude to the act is an implied ruling that it had no pertinency to the question before the court.

The first case we cite refers to showing that one of the principals was a surety and it appears to us to be against the proviso of knowledge by a lawful holder being immaterial. Thus in a recent North Carolina case Williams v. Lewis, 74 S. E. 17, where no allusion was made to N. I. L., a difference of opinion is spoken of as existing among courts as to whether parol evidence is admissible to show that a person apparently a co-principal in a note is, in fact, a surety, it was held that as between the signers the true relation may be shown, but not so as injuriously to affect the payee who loaned his money without knowledge of the relation.

It is to be remembered that the N. I. L., after defining an accommodation indorser, says he "is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."

So also in Farmers Supply Co. v. Weis, 132 N. W. 917, decided by Minnesota Supreme Court, it was said it was not necessary that a contract of suretyship should appear on the face of a promissory note, as it is collateral to the contract, and may be proved by parol as between the makers thereof and the payee if he have notice of their relation to each other. There is cited in support, Kaufman v. Barbour, 98 Minn. 158, 107 N. W. 1128, which case was ruled in 1906.

In this state Negotiable Instruments Act is not

in force and the ruling is precisely like that in the North Carolina case where the Act is in force.

In Massachusetts it was said: "It may be proved by parol that the relation of the parties (to a note) may be different" than according to the legal effect of the instrument, "for example, that the payee or indorsee was the real principal, or that all the parties were joint principals or some of them joint sureties." Enterprise Brewing Co. v. Canning, 96 N. E. 673, citing and quoting Sweet v. McAllister, 4 Allen 353, 354, a case decided long prior to the Negotiable Instruments Law, of which the opinion makes no mention.

Springfield, (Mo.), Court of Appeals held that where each of the makers signed "as principal," he would not be heard to say otherwise and that this holding was not in conflict with Missouri decision holding that one signing as joint obligor may show he signed as surety, which kind of a signing "does not disclose the capacity in which the parties execute it and therefore the written contract is not contradicted by proof that a party in fact signed as surety." One of these cases was decided in 1903 (Markham v. Cover, 99 Mo. App. 83. 72 S. W. 474), and the other decided in 1908, (Reynolds v. Schade, 131 Mo. App. 1, 109 S. W. 629), and in none of the three cases was any reference made to Negotiable Instruments Law. This distinction would seem to be purely verbal, in the face of Negotiable Instruments Act which seems to declare all principals who sign an instrument containing the words "I promise to pay."

In Texas, in a case where the act has not been adopted, it was said: "Although upon the face of the note they all appear to be principals, it is permissible as between payee and the makers to prove, under proper allegations, that one of the makers signed the note in fact as surety, and to make such defenses as are admissible to suretyship." Brandt on Suretyship and early Texas cases are cited. First Nat. Bank v. Rusk Pure Ice Co., 136 S. W. 89.

In Arkansas, where the act has not been adopted, it was held that parol evidence is admissible between original parties to a note to determine whether one is a surety. Jordan v. Harris, 135 S. W. 830.

In Georgia, where the act is not in force, it was said: "It has been many times decided by the supreme court and by this court, even where the fact of suretyship does not appear on the face of the note, if in fact one of the persons signing apparently as a joint or several maker is in reality only a surety, he may set this up against the payee by parol evidence." Hardy v. Boyer, 7 Ga. App. 205, 67 S. E. 205.

A South Carolina case, the act not being there in force, shows it was attempted to prove that it was understood by all parties that each of two makers was only bound to pay one-half of the amount. It was said this would be "in conflict with the well-established and salutary rule, which forbids parol testimony to vary or contradict the terms of a written instrument. * * * Parol evidence of a contemporaneous, collateral or independent agreement is only admissible when it does not vary or contradict the writing," citing prior South Carolina cases. Parker v. Mayes, 85 S. C. 419, 67 S. E. 559. This is somewhat in point and gives merely an argument from inference.

An Arkansas case, the act not being there in force, held that it was competent for an apparent principal to show by parol evidence that she executed the note as surety, the question being important in the case because defendant was a married woman, and if she signed as surety she was not liable. The proof sought to establish the fact that the payee knew she was signing as surety. Vandeventer v. Davis, 123 S. W. 766.

Kentucky Court of Appeals considers the effect of N. I. L. on admissibility of parol evidence, where suit was brought by payee of a note signed by a corporation as maker against certain parties who had placed their names on the back of it. The petition was demurred to for failure to allege notice to indorsers of the non-payment of the note at maturity. The ruling of the trial court sustaining the demurrer was affirmed.

The opinion says: "It is earnestly insisted for the plaintiff that parol evidence may be received to show what the contract between the parties really was, and we are referred to not a few authorities sustaining this view." The court, after stating that a former statute was "to remedy the uncertainty and prevent the litigation resulting from the introduction of parol evidence in this class of cases," then says the negotiable instruments act was evidently also thus intended, saying that: "Under it a person who places his signature upon an instrument other than as maker, drawer or acceptor, is to be deemed an indorser, unless he clearly indicates by appropriate words in the indorsement his intention to be bound in some other capacity." It was said: "The statute fixing the legal effect of the instrument, parol evidence may not be received to give it a different effect." Then is referred to the section making parol evidence admissible as to liability of indorsers among themselves. First Natl. Bank v. Bickel, 143 Ky. 754, 137 S. W. 700. See also Lyons Lumber Co. v. Stewart (Ky.), 145 S. W. 376.

*Cases of Indorsers.*—In Florida the principle is stated that where the statute fixes the status of a party to a negotiable instrument as being that of an indorser parol evidence is not admissible to vary such status." Baumeister v. Kunz, 53 Fla. 340, 42 So. 886. This as a principle being true, if the status of any other party to a negotiable instrument is fixed the same deduction as to admissibility of parol evidence ought to obtain.

In Iowa it was held that parol evidence to vary the liability of a blank indorser so as to make him guarantor and thus relieve the holder of the obligation to make demand and give notice of dishonor is not admissible and such ruling is required by the negotiable instruments act "which has brought the law with us into conformity with that previously existing in other states and generally sustained by the weight of authority." Porter v. Moles, 131 N. W. 23. This case cites Baumeister v. Kuntz, 53 Fla. 340, 42 So. 886; Gibbs v. Guaraglia, 75 N. J. L. 168, 67 Atl. 81; Mackintosh v. Gibbs (N. J.), 74 Atl. 708.

We think the usefulness of the Negotiable Instruments Act could be much enhanced if it were amended so as to cut out as greatly as possible all questions of parol evidence in regard to commercial paper, as has been quite successfully done so far as regards indorsers. C.

## UNIFORM LAWS WHICH HAVE BEEN ADOPTED IN THE VARIOUS STATES.

NEGOTIABLE INSTRUMENTS LAW—States and territories which have passed the Negotiable Instruments Law: Alabama, Arizona, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Delaware, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Philippine Islands, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, District of Columbia.

WAREHOUSE RECEIPTS ACT—States which have passed the Warehouse Receipts Act: California, Connecticut, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Philippine Islands, Rhode Island, Tennessee, Utah, Virginia, Wisconsin, District of Columbia.

SALES ACT—States which have passed the Sales Act: Arizona, Connecticut, Maryland, Michigan, Massachusetts, New Jersey, New York, Ohio, Rhode Island, Wisconsin.

DIVORCE ACT—States which have passed the Divorce Act: Delaware, New Jersey, Wisconsin.

STOCK TRANSFER ACT—States which have passed the Stock Transfer Act: Louisiana, Ohio, Maryland, Pennsylvania, Massachusetts.

BILLS OF LADING ACT—States which have passed the Bills of Lading Act: Connecticut, Illinois, Iowa, New York, Maryland, Ohio, Massachusetts, Pennsylvania.

FOREIGN WILLS ACT—States which have passed the Act Relating to Wills Executed Without the State: Kansas, Washington, Wisconsin, Massachusetts, Michigan, Rhode Island.

FAMILY DESERTION ACT—States which have passed the Family Desertion Act: Kansas, Wisconsin, Massachusetts, North Dakota.

Two other acts were adopted by the conference at its last session, to-wit., the Child Labor Act and the Marriage Act. It also recommended that the states adopt the Federal Food and Drug Act of 1906 as a uniform law in regulation of purity of food and medicines.

## COMMISSIONERS ON UNIFORM STATE LAWS.

OFFICERS OF THE CONFERENCE

WALTER GEORGE SMITH, President,
1006 Land Title Building, Philadelphia, Pa.
A. T. STOVALL, Vice-President,
Okolona, Miss.
CHARLES THADDEUS TERRY, Secretary,
100 Broadway, New York, N. Y.
TALCOTT H. RUSSELL, Treasurer,
42 Church street, New Haven, Conn.
M. GRUNTHAL, Assistant Secretary,
100 Broadway, New York, N. Y.

LIST OF COMMISSIONERS

ALABAMA—Frederick G. Bromberg, Mobile; Henry Tonsmeire, Mobile; S. D. Weakley, Birmingham.

ARIZONA—Edward Kent, Phoenix; E. E. Ellinwood, Bisbee; J. M. Ross, Prescott.

ARKANSAS—John M. Moore, Little Rock; Ashley Cockrill, Little Rock.

CALIFORNIA—John F. Davis, San Francisco; Charles Monroe, Los Angeles; Lynn Helm, Los Angeles; Gurney E. Newlin, Walter R. Leeds, Los Angeles; Oscar A. Trippet, Los Angeles.

COLORADO—Henry C. Hall, Colorado Springs; John W. Davidson, Pueblo; Harry Eugene Kelly, Denver.

CONNECTICUT—Talcott H. Russell, New Haven; Walter E. Coe, Stamford; Erliss P. Arvine, New Haven.

DELAWARE—Phillip Q. Churchman, Wilmington; James M. Satterfield, Dover; Charles M. Cullen, Georgetown.

DISTRICT OF COLUMBIA—F. L. Siddons, Washington; Aldis B. Browne, Washington; Walter C. Clephane, Washington.

FLORIDA—Louis C. Massey, Orlando; F. M. Simonton, Tampa; W. A. Blount, Pensacola.

GEORGIA—Peter W. Meldrim, Savannah; A. C. Pate, Hawkinsville; Reuben R. Arnold, Atlanta.

HAWAII—David L. Withington, Honolulu; Carl S. Smith, Hilo; Charles F. Clemons, Honolulu.

IDAHO—James E. Babb, Lewiston; Fremont Wood, Boise; W. W. Woods, Wallace.

ILLINOIS—John C. Richberg, Chicago; Nathan William MacChesney, Chicago; John H. Wigmore, Chicago; Oliver A. Harker, Champaign; Ernst Freund, Chicago.

INDIANA—Andrew A. Adams, Columbia City; E. B. Sellers, Monticello; S. O. Pickens, Indianapolis; James W. Noel, Indianapolis; Merrill Moores, Indianapolis.

IOWA—Thomas A. Cheshire, Des Moines; Emlin McClain, Iowa City; J. B. Sullivan, Des Moines; H. O. Weaver, Wapello.

KANSAS—A. A. Godard, Topeka; Charles W. Smith, Stockton; S. N. Hawkes, Stockton; S. H. Allen, Topeka; Fred S. Jackson, Eureka.

KENTUCKY—John F. Hager, Ashland; John T. Shelby, Lexington; James R. Duffin, Louisville.

LOUISIANA—W. O. Hart, New Orleans; J. R. Thornton, Alexandria; I. D. Wall, Baton Rouge.

MAINE—Frank M. Higgins, Limerick; Hannibal E. Hamlin, Ellsworth.

MARYLAND—George Whitelock, Baltimore; Jacob Rohrback, Frederick; Lewin W. Wickes, Chestertown.

MASSACHUSETTS—Samuel Ross, New Bedford; Hollis R. Bailey, Boston; Samuel Williston, Cambridge.

MICHIGAN—George W. Bates, Detroit; Cyrenius P. Black, Lansing; Dan H. Ball, Marquette.

MINNESOTA—Rome G. Brown, Minneapolis; C. A. Severance, St. Paul; Edward Lees, Winona.

MISSISSIPPI—R. H. Thompson, Jackson; A. T. Stovall, Okolona; James S. Sexton, Hazlehurst.

MISSOURI—Seneca N. Taylor, St. Louis; John D. Lawson, Columbia; Edwin A. Krauthoff, Kansas City.

MONTANA—J. B. Clayberg, Helena; T. C. Marshall, Missoula.

NEBRASKA—John L. Webster, Omaha; Ralph W. Breckenridge, Omaha; H. H. Wilson, Lincoln.

NEW HAMPSHIRE—Henry E. Burnham, Manchester; Ira A. Chase, Bristol; Joseph Madden, Keene.

NEW JERSEY—Frank Bergen, Elizabeth; John R. Hardin, Newark; John R. Emery, Morristown.

NEW MEXICO—James M. Hervey, Roswell; James G. Fitch, Socorro; A. A. Freeman, Carlsbad (Victoria, B. C.).

NEW YORK—Charles Thaddeus Terry, New York City; Francis M. Burdick, New York City; Carlos C. Alden, Buffalo.

NORTH CAROLINA—J. Crawford Biggs, Durham; Linsly Patterson, Winston-Salem; Charles A. Moore, Asheville.

NORTH DAKOTA—H. R. Turner, Fargo; John E. Green, Minot; Andrew A. Bruce, Pierre.

Ohio—Seth S. Wheeler, Lima; Harry B. Arnold, Columbus.

OKLAHOMA—R. E. Jackson, Sallisaw; D. A. McDougal, Sapulpa; Clinton O. Bunn, Oklahoma City.

OREGON—H. H. Emmons, Portland; W. H. Fowler, Portland.

PENNSYLVANIA—William H. Staake, Philadelphia; Walter George Smith, Philadelphia; Robert Snodgrass, Harrisburg.

PHILIPPINE ISLANDS—E. Finley Johnson, Manila; Charles S. Lobingier, Baguio; W. L. Goldsborough, Manila.

PORTO RICO—Manuel R. Serra, San Juan; Foster V. Brown, San Juan.

RHODE ISLAND—Amasa M. Eaton, Providence; Clarence N. Woolley, Providence; Thomas A. Jenckes, Providence.

SOUTH CAROLINA—T. Moultrie Mordecai, Charleston; John C. Sheppard, Edgefield; John P. Thomas, Jr., Columbia.

SOUTH DAKOTA—U. S. G. Cherry, Sioux Falls; A. W. Wilmarth, Huron; L. W. Crofoot, Aberdeen; J. H. Voorhees, Sioux Falls.

TENNESSEE—Lem Banks, Memphis; W. H. Washington, Nashville; Henry H. Ingersoll, Knoxville.

TEXAS—W. M. Crook, Beaumont; J. F. Maddox, Ballinger; Hiram Glass, Austin; A. F. Hardwicke, Abilene; Edgar Scurry, Wichita Falls.

UTAH—Jerrold R. Letcher, U. S. Courts, Salt Lake; Benner X. Smith, Salt Lake; L. L. Baker, Tooele.

VERMONT—Wallace Batchelder, Bethel; Geo. B. Young, Newport; Charles D. Watson, St. Albans; Marvelle C. Webber, Rutland; John G. Sargent, Ludlow.

VIRGINIA—Eugene C. Massie, Richmond; James R. Caton, Alexandria.

WASHINGTON—Charles E. Shepard, Seattle; Alfred Battle, Seattle; W. B. Tanner, Olympia.

WEST VIRGINIA—John W. Davis, Clarksburg; Hunter H. Moss, Jr., Parkersburg; Chas. W. Dillon, Fayetteville; William W. Brannon, Weston; Edgar B. Stewart, Morgantown.

WISCONSIN—Edward W. Frost, Milwaukee; E. Ray Stevens, Madison; Dr. Charles McCarthy, Madison.

WYOMING—Charles N. Potter, Cheyenne; W. E. Mullen, Cheyenne; Edward T. Clark, Cheyenne.

## LIST OF COMMITTEES OF THE CONFERENCE.

Executive Committee—William H. Staake, Pennsylvania; John R. Hardin, New Jersey; James R. Caton, Virginia; C. P. Black, Michigan; Nathan William MacChesney, Illinois; Walter George Smith, Pennsylvania; A. T. Stovall, Mississippi; Talcott H. Russell, Connecticut; Charles Thaddeus Terry, New York; Amasa M. Eaton, Rhode Island.

Commercial Law—Talcott H. Russell, Connecticut, chairman; W. O. Hart, Louisiana; Charles Thaddeus Terry, New York; George Whitelock, Maryland; A. T. Stovall, Mississippi; Samuel Williston, Massachusetts; T. Moultrie Mordecai, South Carolina.

Wills, Descent and Distribution—W. O. Hart, Louisiana, chairman; W. A. Blount, Florida; Francis M. Burdick, New York; Henry H. Ingersoll, Tennessee; H. H. Wilson, Nebraska; Walter R. Leeds, California.

Marriage and Divorce—Edward W. Frost, Wisconsin, chairman; J. R. Thornton, Louisiana; Seneca N. Taylor, Missouri; F. L. Siddons, District of Columbia; Robert Snodgrass, Pennsylvania; John R. Emery, New Jersey; Ernst Freund, Illinois.

Conveyances—Amasa M. Eaton, Rhode Island, chairman; Thomas A. Jenckes, Rhode Island; Eugene C. Massie, Virginia; Lynn Helm, California; Wallace Batchelder, Vermont; Edward Lees, Minnesota; Clinton O. Bunn, Oklahoma.

Disposition and Proof of Statutes of Other States—F. G. Bromberg, Alabama, chairman; C. N. Woolley, Rhode Island; J. H. Voorhees, South Dakota; F. M. Simonton, Florida; Ira A. Chase, New Hampshire; R. E. Jackson, Oklahoma; Dan H. Ball, Michigan.

Insurance—Frank Bergen, New Jersey, chairman; John C. Richberg, Illinois; James R. Caton, Virginia; Ralph W. Breckenbridge, Nebraska; Harry B. Arnold, Ohio; Andrew A. Bruce, North Dakota; Carlos C. Alden, New York.

Congressional Action—Aldis B. Browne, District of Columbia, chairman; E. Ray Stevens, Wisconsin; S. H. Allen, Kansas; I. D. Wall, Louisiana; Rome G. Browne, Minnesota; W. M. Crook, Texas; George W. Bates, Michigan.

Appointment of New Commissioners—Seneca N. Taylor, Missouri, chairman; W. O. Hart, Louisiana; Edgar Scurry, Texas; D. A. McDougal, Oklahoma; Charles D. Watson, Vermont; Merrill Moores, Indiana; John F. Hager, Kentucky.

Purity of Articles of Commerce—Walter E. Coe, Connecticut, chairman; Walter C. Clephane, District of Columbia; Carlos C. Alden, New York; William W. Branno, West Virginia; Charles McCarthy, Wisconsin; George B. Young, Vermont; John P. Thomas, Jr., South Carolina.

Uniform Incorporation Law—John C. Richberg, Illinois, chairman; Charles Thaddeus Terry, New York; Erliss P. Arvine, Connecticut; John R. Emery, New Jersey; Charles E. Shepard, Washington; C. A. Severance, Minnesota; Seneca N. Taylor, Missouri.

The Torrens System and Registration of Land Titles—Francis M. Burdick, New York, chairman; John H. Wigmore, Illinois; Ira A. Chase, New Hampshire; E. F. Johnson, Philippine Isl-

NEVADA—A. E. Cheney, Reno; G. A. McElroy, Ely; Frank R. McNamee, Caliente.
ands; Rome G. Brown, Minnesota; John D. Lawson, Missouri; Edward Kent, Arizona.

Banks and Banking—John R. Hardin, New Jersey, chairman; Ernst Freund, Illinois; Charles S. Lobingier, Philippine Islands; George W. Bates, Michigan; I. D. Wall, Louisiana; Wm. W. Brannon, West Virginia.

Publicity—W. O. Hart, Louisiana, chairman; Charles Thaddeus Terry, New York; Clarence N. Woiley, Rhode Island.

Special Committee on Vital and Penal Statistics—F. L. Siddons, District of Columbia, chairman; Aldis B. Browne, District of Columbia; Walter C. Clephane, District of Columbia.

Special Committee on Child Labor Legislation—Hollis R. Bailey, Massachusetts, chairman; Amasa M. Eaton, Rhode Island; Nathan William MacChesney, Illinois; Fremont Wood, Idaho; C. A. Severance, Minnesota.

Special Committee on Compensation for Industrial Accidents—Hollis R. Bailey, Massachusetts, chairman; John H Wigmore, Illinois; Aldis B. Browne, District of Columbia; Charles Thaddeus Terry, New York; John R. Hardin; New Jersey; Peter W. Meldrim Georgia; Geo. Whitelock Maryland.

Special Committee on the Situs of Real and Personal Property for Purposes of Taxation—Ernst Freund Illinois chairman; John R. Hardin New Jersey; John H. Voorhees South Dakota; Stephen H. Allen Kansas; Edward Lees Minnesota.

Special Committee to Co-Operate with the American Institute of Criminal Law and Criminology—John H. Wigmore Illinois chairman; John D. Lawson, Missouri; W. A. Blount, Florida.

## CORAM NON JUDICE.

### CONTRACTS OF RESALE UNDER THE UNIFORM SALES ACT.

"Following our custom," says the New York Law Journal "of noting decisions of courts of other jurisdictions passing upon the Uniform Sales of Goods Act (chap. 571, Laws, 1911), we would call atention to the case of Pope v. Ferguson, in the Court of Errors and Appeals of New Jersey (April, 1912, 83 Atl. 353). The portion of the act involved was subdivision 3 of section 148. The entire section is as follows:

"1. Where the property in the goods has not passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

2. The measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

3. Where there is an available market for the goods in question the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver."

The Uniform Sales Act was adopted in the State of New Jersey by an act of May 7, 1907, what constitutes section 148 of the New York act being section 67 of the New Jersey act. Upon identical language the New Jersey court holds that "special circumstances" as used in subdivision 3 (supra) should not be construed to authorize recovery as damages for a seller's failure to deliver, profits to be made on a resale if the contract of resale was made after the contract of sale. We suppose it would also be consistently held that if a contract of resale had been previously made, profits under it could not be recovered as damages unless the seller knew of the subcontract. The following is from the opinion of the New Jersey court:

"The English decisions relating to the breach of such contracts are reviewed in Benjamin on Sales, section 1237, and the textwriter deduces from them the following principle: That, if at the time of the sale the existence of a subcontract is not made known to the seller, a knowledge on his part that the buyer is purchasing with a general intention to resell, or notice of a subcontract given to him subsequent to the date of the contract, will not render him liable for the buyer's loss or profits on such subcontract, and an examination of the cases reviewed by him shows the correctness of his deduction.

"The same principle is to be deducted from the American decisions, many of which are collated in 24 Am. & Eng. Ency. of Law, p. 1155, in support of the text that 'the profits which the purchaser could have made by a resale of the property, in case it had been delivered by the seller, are not an element of damages, when the seller at the time of the sale was not informed of such contract for resale, as such profits cannot be considered as within the contemplation of the parties at the time of sale.' In 35 Cyc. p. 465, the result of the many American decisions there cited is thus summed up by Prof. Cooley in his article on Sales: 'It is generally conceded that the buyer cannot recover the profits on a special contract of resale unless the existence of such contract was disclosed to the seller. If, however, the seller knows that the purchaser has existing contracts for resale, and the contract is made in contemplation of such resale, the buyer may recover as damages the profits or losses by reason of the breach. There can be no recovery of profits on special contracts of resale made after the contract of purchase.' This being the state of the law at the time of the codification of the law of sales by our Legislature, and the purpose of that codification being to make uniform the law relating thereto, we are entirely clear that it was not the intention of the Legislature to except from the general rule of damages declared in the sixty-seventh section of the act cases in which, after the making of a contract for the sale of goods, the buyer has made a contract for the resale thereof."

This decision is eminently proper and may well be generally followed. The court recognizes the duty to interpret the statute in aid of uniformity, and it conduces to that end to pro-

ceed conservatively even, in effectuating provisions of the act, such as the one under consideration, which contemplate exceptions to general rules. "Special circumstances" to differentiate a transaction should not be recognized unless divulging a very broad equity to support them. What constitutes "special circumstances" cannot be prescribed by statute, but it is certainly legitimate to respect a practically universal previous rule of law in determining that "special circumstances" do not exist. —N. Y. Law Journal.

## NEWS ITEMS.

### ANNOUNCEMENT OF NEXT MEETING OF THE CONFERENCE ON UNIFORM STATE LAWS.

The twenty-second annual conference of the Commissioners on Uniform State Laws will take place in Milwaukee, Wisconsin, August 21st to 26th, 1912, inclusive, beginning at 10:30 A. M. Wednesday, August 21st. This conference precedes the annual meeting of the American Bar Association, which occurs August 27th, 28th and 29th, also in Milwaukee.

## BOOKS RECEIVED.

Missouri Digest, vols. 14 and 15. Digest of the Decisions of the Courts of Missouri to January, 1912. St. Paul, Minn. West Publishing Co. Review will follow.

The Modern Law of Evidence. A Treatise on the Modern Law of Evidence. By Charles Frederick Chamberlayne of the Boston and New York Bars. Vol. III. Reasoning by Witnesses. Price $7.00 per volume, or $28.00 for the four volumes. Albany, New York. Matthew Bender & Co. Review will follow.

The Modern Legal Philosophy Series. Comparative Legal Philosophy Applied to Legal Institutions. By Luigi Miralgia, Professor of the Philosophy of Law in the University of Naples. Translated from the Italian by John Lisle of the Philadelphia Bar, with an introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University. Price $4.75. Boston, Mass. Boston Book Company. Review will follow.

Students' Remington on Bankruptcy. A Treatise on the Elements of Bankruptcy Law for the Use of Law Students by Harold Remington. Price, $3.00. Charlottesville, Va. The Michie Company. Review will follow.

The Work of the Advocate. A Practical Treatise Containing Suggestions for Preparation and Trial, Including a System of Rules for the Examination of Witnesses and the Argument of Questions of Law and Fact. By Byron K. Elliott and William F. Elliott. 2nd Ed. Price $4.00. Indianapolis, Ind. Bobbs-Merrill Publishing Company. Review will follow.

The Reform of Legal Procedure. By Moorfield Storey. Price $1.35. New Haven, Ct. Yale University Press. Review will follow.

Public Service Commission Reports, First District of the State of New York, vol 1, July 1, 1907, to September 1, 1909. Price $1.50. Published by the Commission, New York, 1912.

Missouri Bar Association, 1911. Proceedings of the Twenty-Ninth Annual Meeting of the Missouri Bar Association, Held at Kansas City, Mo., Friday and Saturday, September 22 and 23.

## HUMOR OF THE LAW.

Heard in the Cardiff County Court.

His Honor: "Oh, a case of damage feasant, is it?" Indignant female defandant, shaking her umbrella at counsel, whom she had not heard distinctly: "Damaged pheasant! They are barndoor fowls, and not damaged either, for I've kept and fed 'em well. How dare you tell the judge such lies?"—London Law Notes.

Recent exchanges of courtesies between Taft and Teddy revives the story of a witness who testified in Cleveland police court recently as to the circumstances which led up to an assault.

"Both of these gents," said the witness, "was standin' with their elbows on the bar conversin' with each other pretty hot and pointed."

"Relate the conversation," said the prosecutor.

"Oh, I don't remember it, exceptin' that they called each other what they was."

Attorney General Wickersham, at a dinner in Washington, said of a wrong-headed financier:

"His methods are so deplorable that when he tries to defend them he goes to pieces. In fact, he reminds me of an old man who was brought up before a country judge.

"'Jethro,' said the judge, 'you are accused of stealing General Johnson's chickens. Have you any witnesses?'

"'No, sah,' old Jethro answered haughtily; 'I hab not, sah. I don't steal chickens befo' witnesses, sah.'"

A man was up in the municipal court a few days ago charged with "Special intoxication." The reader always wonders what sort of superjoy that is, but such speculations have nothing to do with this story.

"You look like a fairly decent fellow," said the judge, "and I hate to send you to the workhouse. Suppose I gave you a suspended sentence—what would you do to deserve it?"

"I'd sign the pledge, your honor!" cried the prisoner eagerly.

"Indeed! And for how long?"

"Why, your honor, I usually sign it for life!"

"Where was he struck by the automobile?" asked the coroner.

"At the junction of the dorsal and cervical vertebrae," answered the surgeon.

"Will you please point that out on the map?" asked the coroner, indicating one that hung on the wall.—Chicago Ledger.

## WEEKLY DIGEST.

**Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.**



1. **Bankruptcy**—Chattel Mortgage.—Where an unfiled chattel mortgage void as to subsequent creditors is set aside in bankruptcy proceedings against the mortgagor, the mortgagee held entitled to share in the proceeds of the mortgaged property with the mortgagor's subsequent creditors.—In re Huxoll, C. C. A., 193 Fed. 851.

2.——Concealment—That bankrupts, individually and as partners, concealed property from the trustee in bankruptcy, and conspired so to do, held provable by circumstantial evidence.—Stern v. United States, C. C. A., 193 Fed. 888.

3.——Crops.—Crops not sown at the time of the adjudication did not become part of bankrupt's estate.—Bank of Nez Perce v. Pindel, C. C. A., 193 Fed. 917.

4.——Probable Debt.—An execution in personam, founded on a debt provable in bankruptcy, where the execution plaintiff had notice of the bankruptcy proceedings, cannot be enforced against the bankrupt's property acquired after his discharge.—Peterson v. Calhoun, Ga., 74 S. E. 519.

5.——Receivers.—Though the bankruptcy court will ordinarily permit receivers to employ their own attorneys, it will not hesitate to direct a dismissal of attorneys so employed on a showing of improper action.—In re Champion Wagon Co., U. S. D. C., 193 Fed. 1004.

6.——State Laws.—Where a fund in the hands of a bankrupt's trustee was obtained by vacating certain conveyances under a state law, its distribution must be determined by considering the state law as affected by the bankruptcy act.—In re Martin, C. C. A., 193 Fed. 841.

7. **Banks and Banking**—Accommodation Paper.—A bank may hold a note for its own accommodation under the ordinary relationship governing accommodation paper.—Westwater v. Lyons, C. C. A., 193 Fed. 817.

8.——Overdraft.—When a bank permits its customer to overdraw, he thereby becomes the debtor and the bank the creditor.—Vandagrift v. Masonic Home of Missouri, Mo., 145 S. W. 448.

9. **Bills and Notes**—Bona Fide Holder.—An accommodation note executed by a corporation not authorized thereto, being prima facie invalid, the transferee after maturity is required to show that his transferror was a bona fide holder for value before maturity.—Jacobus v. Jamestown Mantel Co., 134 N. Y. Supp. 418.

10.——Evidence.—In an action upon tuition notes given to a private school, a circular and catalogue of the school were admissible to show the terms of the contract between the parties, accepted by giving the notes.—Vidor v. Peacock, Tex., 145 S. W. 672.

11.——Indorser.—One indorsing a note on its back, either at the time of its execution and delivery to payee or prior to its being put in circulation, held liable as a surety theron.—Kissire v. Plunkett- Jarrell Grocer Co., Ark., 145 S. W. 567.

12.——Innocent Holder.—Payments made to the payee of notes after they have been indorsed for value, and before maturity, will not defeat the claim of the bona fide indorsee where not entered on the notes.—Vance v. Bryant, N. C., 74 S. E. 459.

13.——Negotiable Instruments Act.—Under Negotiable Instruments Act, Sec. 63, plaintiff having, after defendant, the payee of a note, simply indorsed his name on it, whereon defendant had it discounted, cannot be held to have indorsed it under an oral agreement with defendant to be surety for the maker.—Lyons Lumber Co. v. Stewart, Ky., 145 S. W. 376.

14.——Payment.—The duty of a maker of a negotiable note to see that the person to whom he pays it has it in possession is not affected by the fact that the note was on its face payable at the office of the person to whom he makes the payment.—Scott v. Taylor, Fla., 58 So. 30.

15. **Brokers**—Consideration.—Where a broker was employed to procure a loan, and absented himself from the closing of the loan on the principal's promise that he should be paid his commission, his absence was sufficient consideration for the promise.—Wolf v. Mellwin Realty & Construction Co., 134 N. Y. Supp. 491.

16.——Offer.—A letter, stating that defendant would pay a broker's commission to the agent with whose buyer defendant should sell at specified terms, constitutes an offer to pay a commission and not merely an invitation for an offer.—Olcott v. McClure, Ind., 98 N. E. 82.

17. **Burglary**—Indictment.—Though charges of burglary and larceny be joined in one indictment pursuant to statute, the jury may convict or acquit of both or either.—State v. Conway, Mo., 145 S. W. 441.

18. **Carriers of Goods**—Conversion.—Where a carrier accepts property for a certain point and diverts it to a different point in another state, where it is attached, and the shipper loses his property, the carrier is liable as for conversion.—Lincoln Grain Co. v. Chicago, B. & Q. R. Co., Neb., 135 N. W. 443.

19.——Delay.—The rule that a carrier is an insurer of safe delivery held not to apply to liability for delay of transportation; reasonable care only being required to avoid delay.—Delaney v. United States Express Co., W. Va., 74 S. E. 512.

20.——Initial Carrier.—A connecting carrier was not liable for defects in fruit cars, or for the failure to keep the cars at the proper temperature, where the cars were loaded by the initial carrier and accompanied by its messengers.—Texas & P. Ry. Co. v. Rackusin, Tex., 145 S. W. 734.

21.——Initial Carrier.—A shipper of an interstate shipment held entitled to recover, under the Hepburn Act, the entire damages from the initial carrier, though the connecting carriers are made parties—Missouri, K. & T. Ry. Co. v. Demere & Coggin, Tex., 145 S. W. 623.

22.——Negligence.—Where plaintiff willfully or negligently misled a transfer company to accept his baggage containing valuables in the form of jewelry, paying therefor a rate reasonable for carrying usual personal baggage, he cannot recover for loss in an action for breach of contract of carriage.—Nathan v. Woolverton, 134 N. Y. Supp. 469.

23.——Notice.—A draft attached to a bill of lading for corn purchased by defendant, payable to plaintiff, was prima facie notice to defendant that the price was claimed by plaintiff, and payment to the seller was unauthorized.—Burton State Bank v. Pease-Moore Milling Co., Mo., 145 S. W. 508.

24.——Unavoidable Accident.—Buckling of rails due to heat expansion in warm weather is not an unavoidable accident; so as to relieve the carrier from liability for injuries to a passenger.—Chesapeake & O. Ry. Co. v. Burke, Ky., 145 S. W. 370.

25. **Carriers of Live Stock**—Limiting Liability.—A stipulation in a contract for transportation of live stock that the shipper will load, feed, and water, and unload and reload at feeding and transfer points, and will care for the stock while in cars and will relieve the carrier from any liability while in his charge, is void for limiting the carrier's common-law liability.—Pecos & N. T. Ry. Co. v. Brooks, Tex., 145 S. W. 649.

26. **Cemeteries**—Lot Owners.—An owner of easement of burial in a cemetery lot is entitled to damages from one who disinters the remains of person buried therein.—McDonald v. Butler, Ga., 74 S. E. 573.

27. **Commerce**—Occupation Tax.—Interstate commerce clause held not to prohibit state or political subdivision from imposing reasonable occupation tax on business of putting up or erecting lightning rods, though the rods were sold by the person taxed as agent for a nonresident manufacturer and shipped from the foreign state directly to the purchaser.—Browning v. City of Waycross, Ga., 74 S. E. 564.

28.——Rates.—The Interstate Commerce Commission may determine the reasonableness of rates and award reparation, and when it does so its conclusions are final unless it has exceeded its prescribed functions in some particular material to the controversy.—Fidelity Lumber Co. v. Great Northern Ry. Co., C. C. A., 193 Fed. 924.

29. **Contracts**—Duress.—What constitutes duress, invalidating a contract, is a question of law for the court; and whether facts sufficient to constitute it exist is for the jury.—Kansas City, M. & O. Ry. Co. v. Graham & Price, Tex., 145 S. W. 632.

30.——Illegality.—A party who has not performed a contract, made in violation of a statute, is entitled to rely on its illegality, when sued by the adverse party, though executed on his part.—President and Trustees of Village of Kilbourn City v. Southern Wisconsin Power Co., Wis., 135 N. W. 499.

31.——Quantum Meruit.—One who sets up an inflated amount when suing on a contract, and endeavors to sustain it with incredible testimony, cannot ask to recover on a quantum meruit.—Alexander v. Morgan, La., 58 So. 13.

32.——Patents.—The prior assignment of a patent by plaintiff to defendant would not support a subsequent agreement by defendant to pay a part of the profits from the sale of the patent to plaintiff.—Randall v. Simmons, 134 N. Y. Supp. 523.

33.——Public Policy.—A contract of employment between an attorney and client, whereby the client is prohibited from settling his cause of action without consent of attorney, is contrary to public policy.—Burho v. Carmichael, Minn., 135 N. W. 386.

34.——Sale.—There was no contract for the sale of ties, where the owner was not bound to sell any; it being necessary that both parties be bound.—Bagnell Timber Co. v. Spann, Ark., 145 S. W. 546.

35.——Waiver.—The condition that a written order for changes from plans and specifications shall be necessary to sustain a liability for extra work may be waived.—F. W. Carlin Const. Co. v. New York & Brooklyn Brewing Co., 134 N. Y. Supp. 493.

36. **Convicts**—Attainder.—The rule of the common law that one attainted of a felony could not be tried again for another felony has never been of force in Georgia.—Flagg v. State, Ga., 74 S. E. 562.

37. **Corporations**—Doing Business.—That a contract sued on by a foreign corporation is invalid because of the failure of plaintiff to comply with the statutory requirements to entitle it to do business in the state is a matter of defense, which must be pleaded by defendant.—Natural Carbon Paint Co. v. Fred Bredel Co., C. C. A., 193 Fed. 897.

38.——Estoppel.—One selling goods to a de facto corporation dealing with it as such cannot hold the stockholders as partners, as he is estopped to deny the existence of the corporation.—Magnolia Shingle Co. v. J. Zimmern's Co., Ala., 58 So. 90.

39.——Foreign Corporation.—A foreign trading corporation is personally present for the purpose of jurisdiction wherever it has established a place of trade.—International Harvester Co. v. Commonwealth, Ky., 145 S. W. 393.

40.——Receiver.—Where two or three persons owning stock of a corporation combine against the third and exclude him from his rights as stockholder and officer, the case is a

proper one for appointment of receiver and issuance of injunction.—Brock v. Automobile Livery & Sales Co., La., 58 So. 21.

41.——Stockholders.—The liabiilty of stockholders to corporate creditors is not a common-law liability, but is regulated and created solely by statutory enactment.—Coulter Dry Goods Co. v. Rosenbaum, 134 N. Y. Supp. 487.

42 **Criminal Evidence**—Instructions.—The court may assume in its instructions as true a fact established by both parties, but it may not assume a fact merely because the state's evidence was not controverted by that of accused. —State v. Anderson, Iowa, 135 N. W. 405.

43. **Criminal Law**—Evidence.—Letters are not inadmissible against accused, because unlawfully seized by authorities, where the search does not appear to have been seriously resisted. —Lum Yan v. United States, C. C. A., 193 Fed. 970.

44.——Former Jeopardy.—Where a verdict is, in legal effect, an acquittal, accused cannot be tried for the same offense, though a new trial be granted on his own motion.—Ezzard v. State, Ga., 74 S. E. 551.

45.——Intent.—In a prosecution for crimes involving an attempt to commit particular acts, proof of intent is essential to conviction.— Hankins v. State, Ark., 145 S. W. 524.

46.——Principals.—Where several parties were acting together in taking fish and dragging seines in prohibited waters, they were all principal offenders, and an instruction to that effect was proper.—Gavinia v. State, Tex., 145 S. W. 594.

47. **Criminal Trial**—Severance.—One charged with conspiracy may be indicted and tried separately, though the crime be one which can be committed only by a combination of persons.— State v. Podor, Iowa, 135 N. W. 421.

48. **Damages**—Compensation.—Compensation is the ordinary rule for assessing damages for personal injuries.—Cleveland, C., C. & St. L. Ry. Co. v. Lynn, Ind., 98 N. E. 67.

49.——Minimizing.—Where plaintiff damaged by defendant's breach of contract failed to minimize its damages for a given year, it will not be permitted to recover the damages for that year.—New Iberia Sugar Co. v. Lagarde, La., 58 So. 16.

50. **Deeds**—Estoppel.—A daughter was estopped from asserting that a deed, releasing her interest in land owned by her father, was executed without consideration and as a result of undue influence, when she took no steps to avoid the deed for 25 years, and until after her father's death.—Felton v. Brown, Ark., 145 S. W. 552.

51. **Divorce**—Property Rights.—The court may adjust property rights in a divorce action, but cannot subject husband's interest in the homestead to debts due the wife.—Shook v. Shook, Tex., 145 S. W. 682.

52. **Ejectment**—Married Woman.—Where one has brought ejectment, there is no exception in her favor because of her being a married woman in the matter of adjustment of betterments and rents.—Whitfield v. Boyd, N. C., 74 S. E. 452.

53.——Trespasser.—As against a person who has taken wrongful possession of land, the previous posessor need not prove a good title in order to recover possession.—Nicholson v. Villepigue, S. C., 74 S. E. 506.

54. **Electricity**—Care.—The owner of electric wires, on public streets and highways, is bound to use the highest degree of care in maintaining them.—Davenport v. King Electric Co., Mo., 145 S. W. 454.

55. **Embezzlement**—Definition.—Embezzlement is the fraudulent and felonious appropriation of another's property by persons to whom it has been intrusted, or into whose hands it has lawfully come.—Hanna v. Minnesota Mut. Life Ins. Co., Mo., 145 S. W. 412.

56. **Eminent Domain**—Easement.—The easement of access of an owner of land abutting on a street is as much property as the land to which it pertains; and he cannot be deprived of it without compensation, though the right is subject to the reasonable control of the Legislature.—Press v. Penny, Mo., 145 S. W. 458.

57. **Equity**—Jurisdiction.—Where the allegations do not show a course of dealing requiring an accounting, the bill of complaint must stand, if at all, on some other equitable ground. —Massengale v. O'Hara, Fla., 58 So. 42.

58.——Trust Property.—Trust property cannot be reached at law, but only in equity, by one for money loaned it and for services under employment by the trustees.—King v. Stowell, Mass., 98 N. E. 91.

59. **Evidence**—Books.—A book of entries was properly excluded where no excuse was shown for failure to produce the person who made the entries or any one having knowledge of their correctness.—Southern Ry. Co. v. Cortner, Ala., 58 So. 84.

60.——Presumption of Law.—A presumption of law is drawn from a particular undisputed fact or is a conclusion of the law itself.— Cleveland, C., C. & St. L. Ry. Co. v. Lynn, Ind., 98 N. E. 67.

61.——Primary—The best evidence rule does not require the minutes of a meeting of a corporation to be produced, but only that a properly certified copy be produced—New Iberia Sugar Co. v. Lagarde, La., 58 So. 16.

62.——Secondary.—Generally, copies of copies are not admissible as secondary evidence of the contents of the original instruments.—William M. Rice Institute v. Freeman, Tex., 145 S. W. 688.

63.——Telegram.—As regards plaintiff's right to introduce in evidence a telegram from defendant, the message he received from the company is the original.—Lyons Lumber Co. v. Stewart, Ky., 145 S. W. 376.

64. **Food**—Liability of Manufacturer.—Where a manufacturer of Malt Nutrine advertised the mixture as healthful and harmless, and sold the article to a wholesale dealer, who in turn sold the same to a druggist, whether the manufacturer was liable for injuries to a consumer of the article, on account of its poisonous character, was a question for the jury.—Roberts v. Anheuser-Busch Brewing Ass'n, Mass., 98 N. E. 95.

65. **Fraud**—Misrepresentation.—Exaggerated statements as to value of mortgaged property is not actionable misrepresentation of fact, if inspection was open and not prevented.—Francois v. Cady Land Co., Wis., 135 N. W. 484.

66.——Rescission.—A party, induced by fraud to make a contract, may sue for damages or for rescission.—Heidenreich v. Doushkess, 134 N. Y. Supp. 472.

67. **Frauds, Statute of**—Defense.—The stat-

ute of frauds is no defense to an action on a note assumed as part of the purchase price of property.—Hawkins v. Western Nat. Bank of Hereford, Tex., 145 S. W. 722.

68. **Grand Jury**—Disqualification.—A grand juror was not disqualified by a preconceived opinion as to accused's guilt, where he finally stated it would not prevent him from rendering a true verdict on the evidence.—State v. Teale, Iowa, 135 N. W. 408.

69. **Homestead**—Abandonment.—When a widow, by the execution of a deed, has abandoned her homestead, she cannot thereafter claim it.—Felton v. Brown, Ark., 145 S. W. 552.

70.——Descent and Distribution.—A homestead of a decedent held to vest on his death in his heirs, freed from claims of creditors.—Wade v. Scott, Tex., 145 S. W. 675.

71.——Divorce.—The husband's status as head of the family is not destroyed by divorce, and hence he can claim a homestead exemption.—Shook v. Shook, Tex., 145 S. W. 682.

72. **Husband and Wife**—Marital Relation.—A husband or wife may maintain an action for damages against any one who wrongfully and maliciously interferes with the marital relationship.—Flandermeyer v. Cooper, Ohio, 98 N. E. 102.

73.——Presumption.—Where a husband a few days after selling his wife's lands invested the proceeds in land, taking the title in his own name, the transaction occurring at a time when he had a right to reduce to possession the proceeds of his wife's real estate, not held as separate estate, held, that it will be presumed that he intended to hold such property as his own.—Williams v. Keef, Mo., 145 S. W. 425.

74. **Infants**—Necessaries.—One who has paid money at the request of an infant to satisfy a debt contracted by the latter for necessaries may recover from the infant.—Equitable Trust Co. of New York v. Moss, 134 N. Y. Supp. 533.

75. **Injunction**—Irreparable Injury—Though a municipality wrongfully used a drainage ditch as an outlet for sanitary sewage, without injuring owners or occupants of other lands assessed for its construction, injunction would not lie to restrain such use, unless it is about to suffer irreparable injury without adequate remedy at law.—Geiger v. Town of Churubusco, Ind., 98 N. E. 77.

76.——Remedy at Law.—A solvent claimant of land, in possession through his tenant, will not be enjoined from entering upon the land at the instance of another claimant; the latter's remedy at law being complete.—Mize v. Herring, Ga., 74 S. E. 534.

77. **Innkeepers**—Guest.—One sending his baggage to a hotel and going there, but doing no more than to sit and write some letters while waiting for a train, was not a guest, with respect to his baggage.—Baker v. Bailey, Ark., 145 S. W. 532.

78. **Insurance**—Accident.—The death of a collector by sunstroke while pursuing his work on a hot day was not within an accident policy insuring against death by sunstroke due to external, violent, and accidental means.—Bryant v. Continental Casualty Co., Tex., 145 S. W. 636.

79. **Judgment**—Res Judicata.—A probate court judgment, rendered on a matter and between parties over which it had full jurisdiction, is as conclusive as one by a court of general jurisdiction.—McDonald v. McDaniel, Mo., 145 S. W. 452.

80.——Res Judicata.—A judgment is conclusive as to all matters in issue, either expressly or by necessary implication, which must have been decided in order to support the judgment.—Shook v. Shook, Tex., 145 S. W. 699.

81. **Judges**—Disqualification.—The fact that the judge organizing the grand jury was himself under bond to await its action was not a ground of disqualification under the common law or Code 1907, § 4626.—Wright v. State, Ala., 58 So. 68.

82. **Landlord and Tenant**—Fire Escapes.—Owner of building, who has provided fire escapes as required by law, is not liable to employes working above second floor for injuries from fire in consequence of obstructions placed in passageway to fire escape by tenant of that portion of the building.—West v. Inman, Ga., 74 S. E. 527.

83.——Mutuality.—If, upon sufficient consideration, a landlord leases land for three years, with the privilege of five years, the privilege is not void, on the ground that it is lacking in mutuality and not binding on the landlord.—Kerr v. Black, Ga., 74 S. E. 535.

84. **Libel and Slander**—Libel Per Se.—Written charge of the commission of a crime constitutes libel per se.—Cook v. Pulitzer Pub. Co., Mo., 145 S. W. 480.

85. **Licenses**—Revocation.—Permission, without consideration, by an owner for the erection of a fence on his land by the adjacent owner is only a revocable license.—Wright v. Brown, Mo., 145 S. W. 518.

86. **Master and Servant**—Contributory Negligence.—It was not contributory negligence for plaintiff, who was injured by being thrown from the train while attempting to uncouple cars, to board the cars when it was necessary so to do, in order to perform the work assigned to him.—Taylor v. Evans, Ark., 145 S. W. 564.

87.——Master's Duty.—There is no absolute duty resting upon an employe to notify his master when the machinery upon which he is working gets out of repair.—West v. Bayfield Mill Co., Wis., 135 N. W. 478.

88.——Ordinary Care.—An employe, on or near a track on which cars are operated, held required to exercise his senses, unless he may depend on being warned, pursuant to express language or a custom.—Heaney v. Boston Elevated Ry. Co., Mass., 98 N. E. 89.

89.——Presumption from Instinct.—It is not error to instruct that the natural instinct of men may raise the presumption that a person injured or killed was in the exercise of ordinary care.—Chase v. Chicago, B. & Q. Ry. Co., Neb., 135 N. W. 430.

90.——Unguarded Machinery.—Where an employe, while oiling a pump and motor, slipped on an icy floor, and in thrusting his hand forward sustained an injury by its being caught in unguarded cogwheels, the employer's negligence in failing to guard the wheels as required by statute was the proximate cause of the injury.—Verlin v. United States Gypsum Co., Iowa, 135 N. W. 402.

91. **Mortgages**—Illegality.—The inclusion of an illegal amount in a note secured by a trust deed vitiates the entire trust deed, and a purchaser, with notice thereof, at a sale thereunder, takes subject to the original purchaser's right to redeem.—Thompson v. Lindsay, Mo., 145 S. W. 472.

92.——Payment.—Payment of negotiable note secured by mortgage to the original mortgagee not in possession of the note or mortgage is not binding on assignee before maturity, unless he had authorized such payment.—Scott v. Taylor, Fla., 58 So. 30.

93.——Void Agreement.—An agreement to notify the defendant before foreclosure suit is brought is void, when without consideration and where there is no agreement to extend the time of payment.—Radford v. Smith, Wis., 135 N. W. 472.

94. **Municipal Corporations**—Building Line.—St. Louis City Charter, authorizing the assembly to establish a building line along boulevards, does not prevent the establishment of different lines along the same boulevard.—City of St. Louis v. Handlan, Mo., 145 S. W. 421.

95.——Contracts.—Contracts between municipalities and public service corporations held, in view of the public interest, to be subject to supervision by the court.—McKnight v. Broadway Inv. Co., Ky., 145 S. W. 377.

96.——Pedestrians.—Where a person passing along a public street within the curb line, there being no sidewalk, was suddenly put to the necessity of stepping to the curb by the approach of an automobile, and stepped onto a catchbasin, the top of which turned and precipitated

her into the basin, the city was liable—Colton v. Kansas City, Mo., 145 S. W. 494.

97. **Negligence**—Reasonable Care.—The "reasonable care" which persons must take to avoid injury to others is proportionate to the probability of injury.—J. G. Christopher Co. v. Russell, Fla., 58 So. 45.

98. **Novation**—Discharge.—A substitution of a new debtor, without assent of the creditor, does not discharge the original obligors.—Hawkins v. Western Nat. Bank of Hereford, Tex., 145 S. W. 722.

99. **Nuisance**—Damages.—Where the escape of noxious gases from a fertilizer plant are not necessary in the proper conduct of the business, a landowner may recover damages as for a nuisance, though he sold the land to defendant with knowledge of the purpose for which it was acquired.—Bigbee Fertilizer Co. v. Scott, Ala., 58 So. 86.

100. **Principal and Agent**—Tort by Agent.—To render the wrong of an agent that of the principal, it is not sufficient that it was done in the course of employment, but must have been in the prosecution of the principal's business.—Firemen's Fund Ins. Co. v. Schreiber, Wis., 135 N. W. 507.

101. **Principal and Surety**—Consideration.—The consideration which will support a contract of suretyship may be one received by the principal debtor, or may consist of a disadvantage incurred by the creditor.—Kissire v. Plunkett-Jarrell Grocer Co., Ark., 145 S. W. 567.

102.——Release.—Sureties in a bond were not released by omission of principal to execute it, if he is otherwise bound for the performance of the duty recited in the condition thereof.—Star Grocer Co. v. Bradford, W. Va., 74 S. E. 509.

103. **Process**—Strict Construction.—The statutory provision for service of summons outside the state, being in derogation of the common law, must be strictly followed to confer jurisdiction.—Sinclair v. Gunzenhauser, Ind., 98 N. E. 37.

104. **Railroads**—Child.—Where a young child went on defendant's track as a mere trespasser, defendant owed her no duty, except to refrain from doing her a willful or wanton injury.—Santora v. New York, N. H. & H. R. Co., Mass., 98 N. E. 90.

105.——Comparative Care.—A lesser degree of caution in looking and listening for trains at a railroad crossing is required of one who has duties on or about the track than is required of a traveler.—Cleveland, C., C. & St. L. Ry. Co. v. Lynn, Ind., 98 N. E. 67.

106. **Reference**—Accounts.—Where the determination of the issues involves examination of a long account, compulsory reference may be ordered.—Vandagrift v. Masonic Home of Missouri, Mo., 145 S. W. 448.

107. **Sales**—Priority.—A manufacturer does not warrant the quality of a mixture as to a buyer with whom it has no privity of contract.—Roberts v. Anheuser-Busch Brewing Ass'n, Mass., 98 N. E. 95.

108.——Violation of Contract.—Where defendant bound himself to sell the yield from his land during five years, his sale of the land before the expiration of that time was an active violation of the contract, and it was not necessary for the purchaser to place him in default.—New Iberia Sugar Co. v. Lagarde, La., 58 So. 16.

109.——Waiver.—Acceptance of part of goods under an indivisible contract after an opportunity for inspection is not a waiver of a warranty as to kind and quality.—Meyer v. Everett Pulp & Paper Co., C. C. A., 193 Fed. 857.

110. **Seduction**—Damages.—The damages recoverable by a parent for the debauchment by force of his adult daughter, rendering services for wages, are the damages recoverable as in case of seduction.—Koenke v. Bauer, Mo., 145 S. W. 506.

111. **Set-Off and Counterclaim**—Loss of Profits.—Loss of profits by the seller from the buyer's failure to take the property is a proper counterclaim in an action against the seller for the value of merchandise which constituted the consideration for the sale, under Civ. Code Prac., Sec. 96, defining counterclaims.—Bowman v. Jones-Hughes Coal Co., Ky., 145 S. W. 373.

112. **Specific Performance**—Evidence.—To authorize a court of equity to compel the specific performance of a contract, it must be reasonably certain as to its subject-matter, stipulations, parties, and circumstances under which made.—McKnight v. Broadway Inv. Co., Ky., 145 S. W. 377.

113. **Subrogation**—Mortgage.—A surety upon notes secured by a mortgage is subrogated upon payment of the notes to the rights of the creditor in any security held by him.—Kissire v. Plunkett-Jarrell Grocer Co., Ark., 145 S. W. 567.

114. **Telegraphs and Telephones**—Agency.—Where a telegraph company sends a messenger for the express purpose of taking a telegram, the boy is the agent of the company, and not of the sender, in spite of a stipulation to the opposite effect on the message blank.—Alexander v. Western Union Telegraph Co., N. C., 74 S. E. 449.

115.——Commerce.—A telegraph company engaged in interstate commerce under Act Cong. July 24, 1866, is entitled to maintain lines over public or post roads of any county, subject to lawful exercise of police power of the state in regulation of their use.—Carver v. State, Ga., 74 S. E. 556.

116. **Tenancy in Common**—Conveyance.—A conveyance to a stranger by tenants in common of their undivided interests makes the stranger and the cotenant tenants in common.—Parsons v. Sharpe, Ark., 145 S. W. 537.

117. **Trusts**—Evidence.—That an express trust was created by deeds which were absolute on their face may be shown by a writing separate from the deeds.—Mugan v. Wheeler, Mo., 145 S. W. 462.

118. **Usury**—Guaranty.—Where a note for $4,000 was sold by the payee for $3,200, and the purchaser required the indorsement of the payee and another as a guaranty of payment, the transaction was usurious as to them.—Sedbury v. Duffy, N. C., 74 S. E. 355.

119.——Parol Evidence.—A debtor or his privies may always plead usury as a defense, though they thereby contradict a written instrument.—In re Canfield, C. C. A., 193 Fed. 934.

120. **Vendor and Purchaser**—Constructive Notice.—A deed from a stranger to the record title to land, although recorded, is not constructive notice to subsequent purchasers in good faith.—Sinclair v. Gunzenhauser, Ind., 98 N. E. 37.

121.——Record Title.—A conveyance by actual owner of land, record title to which was in another, transferred his equitable interest therein to the grantee.—Sinclair v. Gunzenhauser, Ind., 98 N. E. 37.

122. **Verdict**—Special Findings.—A finding that a pedestrian could have seen an approaching engine after reaching a point 15 feet from the track, and that for a distance of 300 feet or more the track was straight, and the only obstruction was a telegraph pole, was irreconcilable with a general verdict for plaintiff.—Wabash Ry. Co. v. Tippecanoe Loan & Trust Co., Ind. 98 N. E. 64.

123 **Waters and Water Courses**—Overflow.—A purchaser has no right of action for overflow, caused by a permanent dam constructed before she purchased the land.—Pence v. City of Danville, Ky., 145 S. W. 385.

124. **Wills**—Construction.—A devise to testator's wife during her natural life, and then to dispose of as she thought proper, passes only a life estate with a mere power of disposition.—Chewning v. Easton, N. C., 74 S. E. 357.

125.——Undue Influence.—Undue influence vitiating a will cannot be shown by opinions separated from the facts—In re Bean's Will, Vt., 82 Atl. 734.